159 U.S. 327

RECORD, CASE No. 14,740.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., ~~546~~ 226

HENRY E. McKEE, APPELLANT,

vs.

CHARLOTTE V. LATROBE, EXECUTRIX OF JOHN H. B. LATROBE, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 14, 1891.

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INDEX.

	Original.	Print.
Docket entries	1	1
Original bill	6	4
Subpœna	20	20
Marshal's return	21	21
Restraining order	21	21
Note as to restraining order	21	21
Answer of H. E. McKee	22	22
Ellen Cochrane	27	26
John D. McPherson	31	31
Exhibit J. D. M. No. 1—Agreement of Latrobe and McPherson, September 14, 1867	33	33
Joinder of issue	34	33
Order fixing time to take testimony	35	34
Motion to retain fund deposited in equity cause No. 11262 (omitted in printing)	36	—
Motion by H. E. McKee to dismiss as to him (omitted in printing)	37	—

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 17, 1893.

	Original.	Print.
Order overruling motion of McKee to dismiss	38	34
Answer of executors of Thomas A. Scott	39	34
Exhibit A—Letter of J. S. Black to James P. Scott, March 27, 1882	41	37
Motion of H. E. McKee to dismiss	43	38
Order overruling motion to dismiss	45	39
Order overruling motion of McKee to dismiss	46	40
Examiner's report of evidence	47	40
Testimony of John H. B. Latrobe	47	40
Exhibit One—Letter from Allen Wright to Pitchlynn & Folsom, March 29, 1867	51	45
Two—Letter from Allen Wright to J. H. B. Latrobe, November 8, 1869	53	46
Three—Letter from Allen Wright to J. H. B. Latrobe, April 3, 1867	53	47
Four—Letter from Allen Wright to E. S. Parker, August 18, 1869	54	48
Five—Affidavit of Allen Wright, John Page, and Alfred Wade	55	48
Order fixing time to take evidence	97	90
Order extending time to take evidence for complainant	98	91
Motion to rescind order of December 11, 1889, and to dismiss bill	99	91
Order overruling motion to rescind and to dismiss bill	100	92
Examiner's report of evidence (omitted in printing)	101	—
Testimony of Richard D. Barclay (omitted in printing)	102	—
Exhibit No. 1—Memoranda February 14, 1867 (omitted in printing)	130	—
No. 2—Letter of J. S. Black, March 27, 1883 (omitted in printing)	132	—
No. 3—Check of Thomas A. Scott to J. S. Black, February 15, 1867 (omitted in printing)	133	—
No. 4—Promissory note of Thomas A. Scott to J. S. Black, Feb. 13, 1867 (omitted in printing)	134	—
No. 5—Promissory note of Thomas A. Scott to J. S. Black, Feb. 13, 1867 (omitted in printing)	134	—
No. 6—Letter of R. D. Barclay to Ward H. Lamon, June 30, 1870 (omitted in printing)	135	—
Order extending time to take evidence for complainant (omitted in printing)	136	—
Order extending time to take evidence for complainant (omitted in printing)	137	—
Petition of complainant to require McKee to submit to oral examination (omitted in printing)	138	—
Motion of complainant to require McKee to submit to oral examination (omitted in printing)	140	—
Order overruling motion to require McKee to submit to oral examination (omitted in printing)	141	—
Order appointing examiner on motion of Ellen Cochrane	142	92
Order extending time in which to cross-examine McKee	143	93
Order granting leave to McKee to file supplemental answer (omitted in printing)	144	—
Amended and supplemental answer of McKee (omitted in printing)	145	—

	Original.	Print.
Exhibit A—Decree in equity case No. 11262 (omitted in printing)	155	—
Commission to take testimony of McKee (omitted in printing)	157	—
Interrogatories to McKee on behalf of Cochrane (omitted in printing)	158	—
Exceptions to interrogatories (omitted in printing)	159	—
Order extending time for oral cross-examination of McKee (omitted in printing)	160	—
Order granting leave to file cross-interrogatories (omitted in printing)	160	—
Original cross-interrogatories to McKee (omitted in printing)	161	—
Order for commissioner to get testimony of McKee in St. Paul (omitted in printing)	162	—
Deposition of H. E. McKee, filed Mar. 17, 1890 (omitted in printing)	163	—
Exhibit No. 1—Paper from which McKee read his answers (omitted in printing)	284	—
Order appointing examiner to take testimony of Latrobe, &c. (omitted in printing)	297	—
Motion to require McKee to answer certain interrogatories (omitted in printing)	298	—
Motion to require McKee to answer certain interrogatories (omitted in printing)	299	—
Order denying motion to require McKee to answer interrogatories (omitted in printing)	301	—
Deposition of John H. B. Latrobe	302	93
Exhibit H—Letters	314	105
Motion by complainant to extend time to take testimony (omitted in printing)	325	—
Order overruling motion for further time, &c.	326	115
Affidavit of Thomas D. Ainsworth	330	117
Exhibit A—Letter of Weed to Leflore, February 12, 1888	331	119
B—Statement of account	333	121
Affidavit of Coleman E. Nelson	334	122
Exhibit A—Letter of McKinney to Nelson	335	123
B—Letter of Nelson to McKinney, July 25, 1887	336	124
Affidavit of John M. Hodges	340	128
Julius C. Folsom	342	130
Charles E. Hovey	343	132
Letter of Smallwood to Hovey, May 4, 1890	345	133
Bill No. 28	346	134
Bill No. 2	349	137
Bill No. 22	350	138
Bill No. 1	351	140
Bill No. 2	352	141
Bill No. 3	354	142
Letter of Weed to Leflore, February 12, 1888	357	145
Letter of Wright to Pitchlynn, March 2, 1867	358	147
Letter of Wright to Pitchlynn & Folsom, March 28, 1867	359	148
Letter of Wright to Latrobe, March 29, 1867	360	149
Letter of Wright to Black, July 15, 1867	361	149
Agreement of Wright *et al.* and Pitchlynn *et al.*, October 19, 1868	362	151
Motion to extend time to take evidence for complainant (omitted in printing)	364	—
Affidavit of John H. B. Latrobe (omitted in printing)	365	—

	Original.	Print.
Order overruling motion to extend time (omitted in printing)	368	—
Motion of McKee to suppress testimony	369	152
Motion to amend original bill (omitted in printing)	372	—
Order overruling motions to amend bill, to strike out, and to suppress	375	154
Opinion	376	154
Opinion as to interest	395	165
Decree of general term	398	166
Notice of appeal	400	167
Appeal and allowance of same	402	168
Order fixing amount of appeal bond	403	168
Assignment of errors	404	169
Appeal bond	409	171
Certificate to record	410	172
Statement of errors by appellant and designation of parts of record to be printed	411	172

1 *Docket Entries.*

Supreme Court of the District of Columbia.

Parties:

LATROBE, JOHN H. B.,
v.
McKEE, 1, HENRY E.; McPHERSON, 2, JOHN D., Ex'r; Scott, —, James P.; Scott, 4, Mrs. Thomas A., Ex'rs; Cochrane, 5, Ellen. } No. 11248.

1888.

July 13. Bill, order to file, appearance filed.
" " Subpœna to answer and copies (2) issued.
" 20. Appearance of defendant No. 2 for September rules, by George F. Appleby and Calderon Carlisle, ordered.
" " Appearance of defendants Nos. 3 and 4 for September rules, by W. Hallett Phillips, ordered.
" 26. Appearance of defendant No. 5 by S. S. Henkle ordered.
Aug. 9. Appearance of defendant No. 1 by Shellabarger & Wilson.
Sept. 4. Subpœna to answer returned served, Nos. 1 and 5, July 14, 188–; not to be found, the others, Sept. 4, 1888.
" 22. Answer of defendant No. 1 filed.
" 27. Time to answer extended till Oct. 20, 1888.
Oct. 2. Answer of defendant No. 5 filed.
" 4. " " No. 2 filed; jurat.
Nov. 17. Joinder in issue filed.

1889.

M'ch 22. Closing of testimony, motion for, and notice of motion filed.

2

" 25. Closing of testimony in 50 days.
Ap'l 9. Appearance of defendant No. 1 by B. F. Rice ordered.
" 16. Retention in the cause of fund in equity No. 11262, motion for, filed.
" " Consolidation of equity 11238 and 11262 with this cause, motion for, filed.
May 4. Dismissal of cause, motion for, and notice of motion filed.
" " " " " denied.
" 14. Answer of executors of Thomas A. Scott.
" 27. Dismissal of bill, motion of defendant H. E. McKee for, filed.
" " Dismissal of bill, motion of defendant H. E. McKee for, overruled.
" " Dismissal of bill, motion for, denied without prejudice.
Sept. 25. Calendared for October, 1889, special term.
Oct. 2. Appearance of defendant McKee by Martin W. Chollar ordered.

Nov. 14. Time to take testimony limited to 50 days.
" 19. *Spa. ad test.*, order for, and issued to Judge John J. Weed.
" 20. " " returned, summoned Nov. 19, 1889.
Dec. 11. Time to take testimony extended 30 days.
" 12. Vacation of order of December 11, 1889, motion for, and notice of motion filed.
" 14. Deposition of R. D. Barclay, behalf of defendants, executors of Thomas A. Scott, filed by Examiner E. L. White;
3 fee not stated.
" 17. Motions for time to take testimony and to dismiss bill overruled.

1890.

Jan. 5. Papers ordered returned to the clerk's office.
" 9. Time to take testimony extended 10 days.
" 17. " " " " 15 days.
Feb. 13. Testimony of Henry E. McKee, motion to appoint examiner to take, and notice of motion filed.
" 18. Testimony of Henry E. McKee, motion to appoint Examiner W. S. Moore, St. Paul., Minn., to take testimony, and notice.
" 19. Oral testimony of McKee, petition and motion for, filed, and notice.
" 20. Testimony of McKee in St. Paul, Minn., W. S. Moore appointed to take.
" " Appearance of McKee for examination before examiner of this court, motion for, denied.
" " Interrogatories to be propounded to Henry E. McKee filed.
" " Commission to get testimony of Henry E. McKee in St. Paul, Minn., issued.
M'ch 1. Time to examine McKee orally extended till March 8, 1890.
" 17. Deposition of Henry E. McKee, behalf of Ellen Cochrane, from St. Paul, Minn.
" " Amended and supplemental answer, motion for, and notice of motion filed.
" " Amended and supplemental answer, leave to file, granted.
" " " " " " of H. E. McKee filed.
" 28. Further deposition of John H. B. Latrobe in Baltimore
4 authorized.
" 29. Answering certain interrogatories of H. E. McKee, motion of complainant for, filed.
" 31. Deposition on behalf of defendant H. E. McKee before W. S. Moore, examiner, with 32 exhibits, filed.
April 3. Motion of Scott's executors to compel McKee to answer questions.
" 7. Motion of Scott's executors and others to compel McKee to answer questions denied.
May 9. Deposition in behalf of Latrobe filed by M. N. Richardson.

May 9. Deposition in behalf of Latrobe in rebuttal filed.
" " " " " " and exhibits filed.
" " Extension of time 90 days to take testimony, motion by complainant —, filed.
" " Replication to McKee's amended and supplemental answer filed.
" 19. Affidavit of C. E. Hovey and exhibits filed.
" " Order overruling complainant's motion for extension of time and certifying cause to general term to be heard in the first instance.
" " Motion for extension of time denied and hearing in gen'l term in 1st instance.
June 23. Motion for extension of time asked; affidavit.
" " Motion for extension of time denied.

1891.

Jan'y 6. Record, copies filed.
" 6. Fixed for hearing peremptorily for January 26, 1891.

5

" 27. Motion for suppression of testimony by defendant McKee.
Feb'y 11. Argued Jan'y 28, 29, 30, Feb'y 2, 3, 4, 5, 6, 9, 10, 11, and submitted.
" " Motion by complainant for leave to file amendment to original bill filed.
May 27. Motion of complainant for leave to file amendment to original bill overruled.
" " Order overruling complainant's motion to strike out exhibits.
" " Order overruling motion of defendant McKee to suppress testimony.
" " Decree awarding $75,000, with interest till paid, in favor of complainant, and provisionally to credit McKee therewith, and costs adjudged against McKee.
" " Appeal to S. C. U. S. by McKee, notice of.
" " " " " " sureties tendered.
" " " " " " motion for, filed.
" " " " " " ordered allowed.
" " " " " " bond, penalty of.
" " " " " " assignment of errors.
" " " " " " bond of appeal.
" " " " " " certificate to record.

6 *Original Bill. Filed July* 13, 1888. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE, Complainant, *v.* HENRY E. McKEE, JOHN D. McPHERSON, Executor of the Last Will and Testament of John T. Cochrane, Deceased; James P. Scott and Mrs. Thomas A. Scott, Executors of the Last Will and Testament of Thomas A. Scott, Deceased, and Ellen Cochrane, defendants.	Equity. No. 11248, Doc. 28.

To the supreme court of the District of Columbia, holding an equity court:

The bill of complaint of the above-named complainant respectfully shows as follows:

1. He is a citizen of the United States and of the State of Maryland, and resides in the city of Baltimore. The defendant, Henry E. McKee, is a citizen of the United States, temporarily residing in said District. The defendant, John D. McPherson, is a citizen of the United States, residing in said District, and is sued as the executor of the last will and testament of the late John T. Cochrane, deceased; the defendants James P. Scott and Mrs. Thomas A. Scott are citizens of the United States and the State of Pennsylvania, and are sued as the executors of the last will and testament of the late Thomas A. Scott, deceased; and Ellen Cochrane is a citizen of the United States, residing in said District.

2. That in 1852 the United States of America was justly indebted to the Choctaw nation of Indians, by reason of the liability of the United States to account to said nation for the net proceeds of certain lands according to several treaties entered into between the United States and said Choctaw nation in the years 1786, 1820, and 1830; and being so liable to the said Choctaw nation as aforesaid, the United States and said Choctaw nation entered into another treaty in the year 1855, for the purpose of securing an adjustment of their said liability; and the plaintiff hereby refers to the said several treaties and asks that the same be taken and considered as a part of this bill, the same not being set out in full to avoid prolixity. That it was provided by the last-mentioned treaty that the liability of the United States and the amount due to the Choctaw nation, if anything, should be submitted to the final arbitrament and award of the United States Senate. Article 12 of said treaty is as follows:

"Article 12. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the

proper authorities of the tribe to be equitable and just—the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws, as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe, shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum, in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay, all the individual claims as aforesaid, it being expressly understood that the adjudication and decision of the Senate shall be final."

3. That for many years prior to the ratification of the last-mentioned treaty, the Choctaw nation endeavored, without success, to bring about an adjustment of their said claim, and had sent many delegations to the executive and legislative departments of the Government at Washington, and before the execution of said last-mentioned treaty desired to secure the services of the said Jno. T. Cochrane, who was then residing at Washington aforesaid, and with a view to employing him to prosecute the said claim in their behalf duly passed a resolution of their legislative council on the 9th day of November, 1853; and this plaintiff refers to the same, and makes the same a part of this his bill. So much of said resolution as is necessary to a proper understanding of the case of the plaintiff is as follows:

"Resolved that P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be and are hereby appointed delegates and fully empowered to represent and to institute, in behalf of the Choctaw people, a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi river, and to defend all and every right and interest of the Choctaws arising under the treaty stipulation or otherwise." And that the said resolution also further provided that in case vacancies should occur in the delegation the same should be filled by the principal chief of the nation. And the said vote also further provided for information to the General Government of the appointment of the said delegates, and on the 10th day of November, 1854, the said Choctaw council duly passed another resolution, which was as follows:

SEC. 15. Whereas the general council of the Choctaws, at its session November 9, A. D. 1853, appointed P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland, delegates to represent the Choctaws at Washington city, and to institute in their name and behalf a claim upon the Government of the United States for further pay and remuneration for the country ceded by them to the Government under the treaty of 1830, concluded at Dancing Rabbit creek, and to protect and to defend every right and interest of the Choctaws arising under treaty stipulations or otherwise, with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw nation against the United States

Government, and to adjust and bring to a close all unsettled business of the Choctaw people with the said Government of the United States; and whereas the incipient steps have been taken by said delegation to effect the object of their mission; and whereas, from the nature of claims and interests of the Choctaw people, their long standing and intricate nature, further trial is necessary to bring them to a successful issue; and whereas the Choctaw council has undiminished confidence in the wisdom, prudence, and integrity of the said delegation: Therefore

Be it resolved by the general council of the Choctaws, That F. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be, and they are hereby, instructed to remain at Washington city and continue to press to a final settlement all claims and unsettled business of the Choctaws with the Government of the United States, with full power to take all measures and to enter into any and all contracts which in their judgment are or may become necessary and proper, in the name of the Choctaw people, to bring — a final and satisfactory adjustment and settlement all claims or demands
8 whatsoever which the Choctaw tribe, or any member thereof, has against the Government of the United States by treaty or otherwise.

Resolved, That the Choctaw delegation be instructed to request the Commissioner of Indian Affairs to authorize D. H. Cooper, United States agent, to repair to Washington city for the purpose of assisting in the investigation of Choctaw claims, and by his counsel and advice to aid in consummating a final satisfactory settlement of all the unadjusted Choctaw matters with the Government of the United States as speedily as possible.

Approved by—

G. W. HASKINS,
P. FOLSOM,
N. COUCHARENT,
J. FRAZIER,
Chiefs.

4. And the plaintiff further shows that in pursuance of the action of the Choctaw council, and in accordance with the authority given to the said delegates, the said delegates and the said Jno. T. Cochrane entered into a mutual agreement in relation to the prosecution of the said claim by the said Cochrane, and providing for the remuneration of the said Cochrane for the services he should render in their behalf, which said contract is as follows:

Whereas a contract was entered into on the 13th day of March, 1854, between the undersigned, as the duly authorized delegates and representatives of the Choctaw nation of Indians, of the one part, and Albert Pike, of the State of Arkansas, of the other part, whereby it was stipulated and agreed that for and in consideration of a certain rate of compensation, to be paid to him, the said Albert Pike was to act as the agent and attorney of the Choctaw nation of Indians in the prosecution of certain claims and demands held by the said nation on the Government of the United States; and

Whereas the said Albert Pike was obliged to leave the city of Washington before any progress was made in the prosecution of said claims, and has not been able to render any service therein; and

Whereas the said delegates and representatives have been obliged to rely and depend upon John T. Cochrane, of the city of Washington and District of Columbia, who has been for the last three years past acting as the agent of the Choctaw nation in the prosecution of a claim in their behalf on the Government of the United States for arrearages of annuities and school moneys, and in regard to which he has rendered the most important and valuable services in procuring the necessary investigations and favorable reports from the proper departments and officers of the United States; and

Whereas he has thus far rendered all the services which have been performed in the prosecution of the matters referred to in the aforementioned contract with the said Albert Pike, and which services have been of the most laborious and valuable character in placing said matters upon a proper basis and in a favorable train of adjustment; and

Whereas the said delegates and representatives have still to rely upon the said John T. Cochrane for the further and continued management and prosecution in a proper and official manner of all the aforesaid claims and demands of the Choctaw nation against the Government of the United States, and they consider it necessary for the interests of their nation that all the business connected with said claims and demands shall be under his exclusive control and management: Now,

Therefore, the said delegates and representatives do hereby revoke and annul the aforementioned contract with the said Albert Pike, and declare the same to be null and void; and having full power and authority from the Choctaw nation, under an act or resolution of the council thereof, adopted and approved on the 10th day of November, A. D. 1854, and a copy of which is hereto annexed and made part thereof, to take all measures and to enter into all contracts which in their judgment are or may become necessary and proper in the name of the Choctaw people to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever which the Choctaw tribe or any member thereof have against the Government of the United States by treaty or otherwise.

Now this agreement made and entered into this 13th day of February, 1855, by and between Peter P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland, delegates duly appointed by an act of the Choctaw council approved on the 10th of November, 1854, of the first part, and John T. Cochrane of the second part, witnesseth:

The party of the second part hereby agrees, obligates, and
9 binds himself to continue as heretofore with zeal, energy, and fruitfulness to urge and prosecute all the unsettled claims and demands of the Choctaw nation upon the United States, before any of the departments or officers thereof, and if necessary before Con-

gress, and especially the claim of said nation arising under the treaty of Dancing Rabbit creek, of September 27, 1830, to the net proceeds of the lands ceded to the United States by that treaty; and the said party of the second part further obligates and binds himself to do his best and utmost to obtain payment of said claims and demands, and in all things appertaining thereunto to faithfully represent the said nation, and guard its interests, and strive to enforce its rights, at his own cost and expense; and the said parties of the first part, for and in behalf of, and in the name of the Choctaws, do hereby covenant, promise, and agree to and with the said party of the second part, and thereto solemnly and irrevocably pledge its and their faith and honor, that of and out of any and all moneys obtained by and paid to said nation, or individuals thereof, for and on account of any or all of said claims, there shall be promptly and faithfully paid to the said party of the second part the amount of 30 per centum of every and all such sum or sums of money payable to said party of the second part, his heirs or assigns, so soon as the same shall be paid by the United States to the said Choctaw nation, or its legally authorized representatives, without any evasion or delay.

And it is further agreed, and the said Choctaw nation, by the undersigned delegates, do hereby authorize and empower the agent of the United States for the Choctaw Indians, or any other person into whose hands any money due and payable to the Choctaw nation, on account of any or all of the claims hereinbefore referred to, shall come, on the demands of the said party of the second part, his heirs or assigns, to pay over to him or them 30 per centum of the same, and on the production of a receipt therefor from the said party of the second part, his heirs or assigns, then that the said Choctaw nation shall and will forthwith give to the said agent, or person having said money for disbursement, good and sufficent vouchers therefor to pass said payment at the settlement of his account in Washington.

In testimony whereof the said parties of the first part, for and in behalf of the said Choctaw nation, and the said party of the second part, for himself, do hereunto set their hands and affix their seals this 13th day of February, A. D. 1855.

P. P. PITCHLYNN. [SEAL.]
ISRAEL FOLSOM. [SEAL.]
SAMUEL GARLAND. [SEAL.]
DICKSON W. LEWIS. [SEAL.]
JOHN T. COCHRANE.

DISTRICT OF COLUMBIA, }
County of Washington. }

Be it remembered that on this 22d day of June, A. D. 1855, before me, the subscriber, an acting justice of the peace in and for said county, personally appeared the said Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, Choctaw delegates, and acknowledged that they signed, sealed, and delivered the foregoing contract to John T. Cochrane, who also appeared and acknowledged that he executed the same, for the purpose and the day therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal.

[SEAL.] JOHN L. SMITH.

5. And the plaintiff further shows that at a time very soon after the passage of the said resolution of November 9, 1853, the said Jno. T. Cochrane entered upon his duties in that behalf, and commenced rendering services for the said Choctaw nation, and immediately upon the execution of the contract above set forth, as their representative and attorney, succeeded in inducing the authorities of the United States to enter into the just and reasonable treaty of 1855 with said nation, and that treaty having been properly ratified by the parties, the said Cochrane devoted his entire time, as this plaintiff is informed and believes, to the preparation of the cause of the Choctaw nation for a hearing before the Senate of the United States, as was provided in the said treaty. And the said cause was heard by the Senate of the United States in pursuance of the said treaty, and on the 8th day of March, 1859, that body made its award; so much thereof as is material or necessary to be stated, is as follows:

"Resolved, That the Choctaws be allowed the proceeds of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the cost of survey and sale and all proper expenditures and payments under said treaty, excluding reservations allowed and secured, and estimating script issued in lieu of reservations at $1.25 per acre; and further that they be allowed 12½ cents per acre for the residue of their lands."

6. And the said award of the said Senate of the United States further empowered the Secretary of the Interior to ascertain and report the amount of the net proceeds due to the Indians under said award; and that official made his report to the said Senate on the 8th day of May, 1860; from which it appears that there was due to the Choctaw nation under said award of the Senate of the United States the sum of $2,981,247.30.

7. That after the close of the war of the rebellion the said Choctaw nation, by its duly authorized legal representatives, employed the complainant as their counsel and professional advisor in all matters, including the net-proceeds claim, so called, appertaining to their rights and claims against the United States, for which said nation agreed to pay him a reasonable compensation. Thereupon this complainant entered upon the duties thus assumed and immediately prepared the treaty between the said nation and the United States, which was finally ratified and approved on the — day of ——, 1886. The 10th article of said treaty reaffirmed all obligations of the United States arising from treaties, stipulations, or acts of legislation, and the 4th article reinstated the Indians in their rights, privileges, and immunities. Under this treaty the said claim, known as the claim for net proceeds, was secured and has since been prosecuted to a successful conclusion.

To enable him successfully to conduct said business for said nation, it was necessary for him to, and he did, employ several persons to aid him therein, and became responsible to them for the

payment of such sums as might be fair and reasonable for such services. And among them were Douglas H. Cooper and Charles E. Mix. The complainant devoted his time and professional services largely to the interest of the said nation, especially during the sessions of Congress.

8. He procured, and prepared, and submitted large masses of evidence to the various committees of Congress having the said matters in charge, and made numerous laborious professional arguments before said committees and before the executive officers of the United States, and stated accounts in behalf of the said nation and against the United States. The papers and written arguments and correspondence prepared and submitted and carried on by him in behalf of said nation, in the five or six years during which he was most actively engaged in the prosecution of said claim, would fill volumes.

Upon the results of the labor performed by him, and the evidence prepared and submitted by him, the said claim was mainly based, and was finally conducted to judgment and payment as hereinbefore stated.

9. The complainant is a lawyer by profession; is 85 years
11 of age, and has been engaged in the active practice of the law for upwards of sixty years.

10. That the said John T. Cochrane died on the 21st day of October, 1866, and the defendant, John D. McPherson, was thereupon duly appointed and qualified as executor of the said last will of said Cochrane, and he has ever since continued to act in that capacity.

11. Soon afterwards the said John D. McPherson, as executor as aforesaid, entered into a contract with said Jeremiah S. Black, which said contract is as follows:

Whereas P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland were duly and legally appointed delegates of the Choctaw nation to press to final settlement all claims and unfinished business with the United States, and to enter into all contracts necessary and proper in their judgment to that end; and whereas, in pursuance of that authority so confided to them, the said delegates, on the 13th day of February, 1885, entered into a contract with John T. Cochrane, of Washington city, which contract was indorsed and approved on the 2d of April, 1866, by the delegate of the Choctaw nation, who signed the treaty with the United States, April 28, 1866, as by said contract and indorsement thereon fully appears, the object of said contract being to secure the services of said Cochrane and such persons as he might approve and employ in securing to the Choctaw nation the adjustment and settlement and final payment of certain claims therein mentioned, and particularly a claim for the net proceeds of certain lands ceded by the Choctaw nation to the United States, and it was agreed that the said Cochrane should receive and retain out of any moneys finally received for the Choctaw nation 30 per cent. out of the whole sum to be received, paid to, and retained by the said Cochrane, his heirs and assigns, whenever the said money should be paid by the United States; and whereas the said Cochrane proceeded under said con-

tract to prosecute said claims, and particularly the "net-proceeds" claim, so called, hereinbefore mentioned, and prosecuted the said "net-proceeds" claim, so called, to adjustment and settlement by the treaty of June 22, 1855, and by an award of the Senate of March 9, 1859, and by other acts of the United States authorities, and further obtained an appropriation of $500,000 by Congress on account thereof, and afterwards died, on or about the 21st day of October, 1866, having before his death entered into certain conditional arrangements with Jeremiah S. Black, of Washington city, for the further prosecution of said claim by obtaining an appropriation for the payment of the residue thereof, which arrangement the executor of said Cochrane is desirous to carry into effect, being thereto fully and specially authorized by the will of the said Cochrane:

Now, therefore, this agreement, made this 8th day of November, in the year 1866, between John D. McPherson, executor of John T. Cochrane, and Jeremiah S. Black, both of Washington city, witnesseth:

1. That the said J. S. Black agrees to proceed with all diligence to procure from the Congress of the United States an appropriation for the payment of the residue of the said claim of the Choctaw nation and to employ competent assistance in the prosecution of said claim.

2. That the said John D. McPherson, executor of the said John T. Cochrane, agrees to assign, set over, and transfer all the right, title, and interest of the said John T. Cochrane, his heirs and assigns, in and to the 30 per centum compensation secured to the said Cochrane by the contract aforesaid, and to the payment of which to him, his heirs and assigns, the faith of the Choctaw nation stands by said contract solemnly and irrevocably pledged.

3. That the said J. S. Black, in the further prosecution of said claim, is hereby substituted in the place of said Cochrane, as the attorney, counsel, and agent of the said Choctaw nation, with authority to do, perform, and receive all and everything which by the said contract the said Cochrane might do, perform, and receive, and to demand from the said Choctaw nation whatever the said Cochrane under the said contract might demand.

4. That the said J. S. Black shall pay out of the money so to be received by him such sum to the executor of said Cochrane as shall be agreed on by the parties hereto, and shall pay all other demands justly due and payable out of the said compensation of 30 per cent., so that the Choctaw nation shall not under any circumstances be compelled to pay more or greater compensation for services rendered or to be rendered than the 30 per cent. agreed upon by the contract hereinbefore referred to.

5. That inasmuch as the said J. S. Black desires the approval of the authorized delegates of the Choctaw nation to this ar-
12 rangement before undertaking the duties herein imposed upon him, this agreement shall not take effect to bind him until such approval be had.

JOHN D. McPHERSON, [SEAL.]
Executor of John T. Cochrane.
J. S. BLACK. [SEAL.]

Afterwards the said agreement was approved by the properly authorized representatives of said nation, and endorsed thereon in the following words:

We, the undersigned, delegates of the Choctaw nation, do hereby approve and assent to the provisions of the foregoing agreement and to the substitution of J. S. Black in the place of John T. Cochrane, deceased, as the attorney, counsel, and agent of the Choctaw nation for the prosecution of said claim, and hereby promise to do and perform and pay to the said J. S. Black whatever by the said contract with said Cochrane the said Choctaw nation was bound to do, and we renew with said J. S. Black all the covenants, agreements, and promises heretofore made and concluded with said Cochrane, agreeing that whatever rights said Cochrane had under the contract of February 13, 1855, in regard to the said unappropriated residue of the said net-proceeds claim, the said J. S. Black shall have under this agreement, and upon the same terms and conditions, provided the said J. S. Black shall make the payments agreed to be made by the foregoing agreement and perform the acts herein agreed to be performed.

P. P. PITCHLYNN.
SAMUEL GARLAND,
By P. P. PITCHLYNN,
His Attorney-in-fact.
ISRAEL FOLSOM.
PETER FOLSOM,
By ISRAEL FOLSOM,
His Attorney-in-fact.

12. That the fact of the assignment of the said contract so made between said Choctaw nation and the said Jno. T. Cochrane, with the approval of the delegates of said nation, to said Jeremiah S. Black was duly reported by the said delegates to the council of the tribe, and thereupon the council passed its vote, bearing date the 18th day of November, 1867, which is hereby referred to and made a part of this bill, and which recites in its preamble the appointment of said Pitchlynn and others as delegates of the tribe, and that the said delegates had effected a basis for the payment of the claim as mentioned in the 12th article of the treaty of 1855, and the fact of the award of the Senate and the statement of the account thereunder by the Secretary of the Interior; and the said vote is as follows:

"SECTION 1. Be it resolved, &c., That the delegation composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom are hereby notified that inasmuch as they have nearly consummated 'the net-proceeds question' they shall proceed without delay to Washington city for the express purpose of bringing the subject-matter of these resolutions to the attention of Congress, and to respectfully ask an early appropriation to be made to carry into effect the amount due to this nation as stated in the preambles to these resolutions.

"SECTION 2. Be it further resolved, That in the event an appropriation shall be made by Congress in whole or in part payment of the net-proceeds sale of land of the Choctaws which they ceded to the United States beyond the Mississippi river, the delegates herein mentioned shall report to the national attorney of this nation the fact of such appropriation, who shall proceed to investigate the claims of such delegates as well as the amount as may be due their attorneys as fees under a certain contract said to have been
13 made with Jno. T. Cochrane, dated February 13th, 1855, and shall report the amount due to delegates and attorneys, and the principal chief of the nation shall convene a council, should he deem it necessary, in order to provide payment due under the contract aforesaid, as well as to carry into effect the 12th article of the treaty of June 22, 1855; it being understood, however, that no money should be paid on said contract which had not been duly authorized by the council; and when the contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary."

13. That the said agreement between the said Black and the said McPherson and the said approval by said nation was without consultation with this complainant and without his knowledge or consent, but this complainant subsequently had conversations and treaties with said McPherson and said Black which resulted in an agreement between this complainant and said McPherson by which said McPherson agreed to pay to this complainant the sum of seventy-five thousand dollars ($75,000.00) in full for all his services in and about said business for said nation, out of the first moneys which should be received by him, said McPherson, of, or on account of, said claim of said Choctaw nation against the United States; thereupon the complainant gave his consent to said arrangement between said Black and said McPherson and the said nation.

This complainant further says that his professional services continued actively, in conjunction with said Black and others, in the prosecution of said case in behalf of said nation until about the time said McKee interposed in the business as the leading agent of said nation, which was some time about the month of July, 1870. After that date his services were apparently not needed or desired by the other attorneys of said nation, and he did but little, but he is informed and believes that said McKee and those working with him prosecuted the case which he had previously prepared and perfected, and with the use of the results of his professional industry, skill, and labor, secured the payment of the said claim to the said Choctaw nation, as will hereinafter appear.

14. That the late Thomas A. Scott, of Pennsylvania, now deceased, as complainant is informed, undertook to become interested with said Black and McPherson, either by advancing money or rendering services in and about said claim in behalf of said nation, and consequently his legal representatives claim an interest in said 30 per cent. fund in behalf of the estate of said Scott, and therefore they are made parties hereto; but whether or not said claim in be-

half of said estate is valid and binding this complainant neither admits or denies.

15. On the 14th of February, 1867, a memorandum of agreement on the subject was entered into, as complainant is informed and believes, between Black, Scott, and McPherson, in the words and figures following:

Memoranda, February 14, 1867.

"1. In February, 1855, the Choctaw nation agreed with John T. Cochrane for certain services which he promised to render in collecting this claim against the United States, generally called the 'net-proceeds claim,' and then services were rendered to the extent of his power and to the satisfaction of the nation for many 14 years, and until the time of his death in October, 1866, the business being still unfinished. By the contract he was to have 30 per cent. of the claim when collected.

"2. After his death his executor, J. D. McPherson, Esq., in pursuance of Cochrane's request while living and under a power given in the will, desired to transfer the contract with the Choctaws to J. S. Black, and to invest him with the powers, authorities, and rights which Cochrane had thereunder, provided said Black would perform the services to the Indians required of Cochrane, and also make proper satisfaction to Cochrane's estate for the work already done.

"3. The said Black assented to take such transfer and assume the duties of Cochrane to the Choctaws and satisfy Cochrane's executor, provided the Choctaws by their authorized chiefs and delegates would request him, and confirm the transfer of the contract and consent to abide by it. This appears by written agreement between McPherson, executor of Cochrane, and Black, dated November 8, 1866.

"4. Afterwards the delegates of the Choctaws, to wit, P. P. Pitchlynn, Samuel Garland, by P. P. Pitchlynn, his attorney-in-fact, Israel Folsom, and Peter Folsom, by Israel Folsom, his attorney-in-fact, did ratify the said transfer, and promised, covenanted, and agreed to keep the conditions and terms thereof with said Black as fully as they were bound to do with Cochrane. This appears by their paper appended to the contract of McPherson with Black.

"5. Upon an exhibition of these facts to Col. T. A. Scott, of Philadelphia, together with the treaty between the United States and the Choctaws of April 20, 1866, and that of June 22, 1855, and after an examination by him of the report of the Secretary of the Interior dated February 5, 1867, letter to chairman of committee on appropriations, he, the said Scott, consented to unite with the said Black in performing part of the services and in making part of the compensation to Cochrane's estate for past services, in consideration that he should receive part of the 30 per cent. payable when the money is collected out of the claim.

"6. Therefore, it is now agreed that Scott shall advance $75,000 to Cochrane's executor, by paying in cash $25,000 and giving his

notes payable in ninety days to J. S. Black, which the said J. S. Black may indorse to McPherson without recourse, Black not to be responsible for said notes in any event.

"7. Scott further agrees that he will use all proper and lawful diligence to promote the payment by the United States of the said claim, and do what is necessary and right to get the appropriation made by Congress for that purpose.

"8. On his part Black agrees to demand the money when it becomes payable under the contract to him, and to execute fully and faithfully his agreement with the Choctaws and with McPherson, so as to entitle him to receive the said money under the contract when the United States shall pay the same to the Choctaws or their authorized agents.

"9. When Black receives the money, or part thereof—that is to say, the money applicable to the 30 per cent. for Cochrane's compensation—he shall pay it as follows: In the first place, $75,000 shall be applied to reimburse Scott for his advance to McPherson, and after that all sums subsequently received shall be applied *pro rata* to satisfy the rights of the other parties; those rights are that McPherson shall receive $75,000 more, Scott shall receive $150,000, besides reimbursement of the $75,000 advanced, and Black, for himself and others associated with him, shall retain the balance of what was secured to Cochrane by the agreement of 1855; in other words, the division shall be as follows: Scott to reimburse his advances, shall be paid out of the first money received, $75,000; and all sums afterward received shall be paid *pro rata* on the following, to wit: Scott, for his services and his risk on advances, $150,000; McPherson, in further compensation for Cochrane's past services, $75,000; Black, for himself and other persons associated with him, for their services shall retain the balance.

"10. It is distinctly understood that what is here spoken of as money to be divided is the money which would have been due to Cochrane agreeably to the contract of 1855. (And that of the gross sum which Black may receive he is to distribute only 30 per cent. among the present contracting parties, paying to the Choctaws all of the other 70 per cent. unless the Choctaws shall receive their own part of it directly from the United States.)

"11. Scott is to have the option to lift his notes for the $50,000 when he sees proper.

"We agree, each of us, severally, to the parts of the above contract which concern us. It is the final understanding of the subject, and merges all that has been previously said or done about the same matter.

"J. S. BLACK.
"JNO. D. McPHERSON,
"*Executor of Jno. T. Cochrane, Deceased.*
"THOMAS A. SCOTT,
"Per R. D. BARCLAY,
"*Private Secretary.*

"Scott has given his check for $25,000 and his notes at 90 days for $50,000.

"J. S. BLACK."

16. That the said Jeremiah S. Black departed this life on or about the — day of ——, 1884, but this complainant does not know, and has not yet been able to ascertain the names of his personal representatives, and asks leave to make them parties hereto when he or they shall be ascertained.

17. By virtue of an act of Congress, approved March 3, 1881 (21 Statutes, 504), all the matters of dispute between the United States and said Choctaw nation were referred to the Court of Claims; whereupon such proceedings were had in said court as resulted in a judgment in favor of said Choctaw nation, from which said judgment both parties appealed to the Supreme Court of the United States; and the same was heard and decided by that tribunal in 1886, and on the 14th day of December in that year, said Supreme Court sent down its mandate to the Court of Claims directing it to enter judgment against the United States for the sum of $2,858,798.62, and the same was entered accordingly.

18. And the complainant further shows that, by an act of the 50th Congress, approved on the — day of June, 1888, it was enacted, among other things, as follows:

SEC. 9. That for the payment to the Choctaw nation, two million eight hundred and fifty-eight thousand seven hundred and ninety-eight dollars and sixty-two cents, the said sum being the amount of the judgment rendered in favor of said nation by the Court of Claims, on the fifteenth day of December, anno Domini eighteen hundred and eighty-six, on a mandate issued by the Supreme Court at the October term of said court, together with such further sum as may be necessary to pay the interest on said judgment at five per centum per annum from the date of the presentation of the transcript of said judgment to the Secretary of the Treasury for payment, as provided in section one thousand and ninety of the Revised Statutes, to the date of this act. The appropriation, not subject to lapse, or to be covered into the Treasury; and said sum, together with the interest thereon, shall be paid from time to time, and in such sums as requisition or requisitions therefor shall be made, by the proper authorities of the Choctaw nation, to the national treasurer of said nation, or to such other person or persons as shall be named in said requisitions therefor, in accordance with article twelve of the treaty between the United States and the Choctaw and Chickasaw nations, concluded June 22d, eighteen hundred and fifty-five: Provided, that no interest shall be paid on this appropriation after the passage of this act, but the amount herein appropriated to be immediately available, and to be in full satisfaction of all claims against the United States arising under article twelve of said treaty."

19. That the defendant, Henry E. McKee, who has been for many years doing business in Washington aforesaid, in 1870, and while the complainant and said Black and others were engaged in the prosecution of said claim, as the complainant is informed and believes, procured from the agents or some of the agents of said Choctaw nation, an agreement of which the following is a true copy, to wit:

"Whereas the council of the Choctaw nation or tribe of Indians did, by resolution approved November 9th, 1853, appoint P.
16 P. Pitchlynn, Israel Folsom, Dixon H. Lewis, and Samuel Garland, of the Choctaw nation, as delegates to proceed to Washington, with full powers and authority to prosecute the claims of the Choctaw people against the United States arising from the sale of lands east of the Mississippi river, ceded by the Choctaw nation to the United States, and for other purposes, which power and authority of said delegates was reaffirmed by the Choctaw council by resolution approved November 10th, 1854, with power to enter into contracts and in the name of the Choctaw people to do whatever in their judgment was necessary to a final adjustment and settlement of the aforesaid claims of the Choctaw people against the United States; and

"Whereas on behalf of the Choctaw people we have employed James G. Blunt, of the city and county of Leavenworth, State of Kansas, and Henry E. McKee, of Fort Smith, Arkansas, as counsel to prosecute said claim, and recover the same to the Choctaw nation or people. It is therefore stipulated and agreed that for services rendered and money expended and to be expended by them in the prosecution of said claims, the said James G. Blunt and Henry E. McKee shall receive thirty (30) per centum of the one million eight hundred and thirty-four thousand and eighty-four ($1,834,084) dollars, awarded and due to the Choctaw people by the United States, or of any sum that may be paid by the United States on account of said claim, which (30) per centum of said claim shall be paid to said Blunt and McKee, or their legal representatives, whenever the money or bonds arising from said claim shall come into the possession of the party or parties authorized by the Choctaw people to receive the same.

"The said Blunt and McKee to pay to Mrs. John T. Cochran[e], of Washington city, D. C. (5), five per centum from the (30) thirty per centum before referred to whenever they shall receive the same; and the said Blunt and McKee further agree to adjust the claims of all parties who have rendered service heretofore in the prosecution of said claim upon the principle of equity and justice according to the value of the services so rendered.

"In witness whereof we have hereunto set our hands and affixed our seals this 16th day of July, A. D. 1870, at the city of Washington, D. C.

"P. P. PITCHLYNN. [SEAL.]
"PETER FOLSOM, [SEAL.]
"By P. P. PITCHLYNN,
"His Attorney-in-fact.
"JAMES G. BLUNT. [SEAL.]
"HENRY E. McKEE. [SEAL.]"

20. That if, contrary to the expectations of the plaintiff, it should be held by the court here that the said contract of the said Pitchlynn, Blunt, and McKee is a valid contract and binding upon the said McKee and the Choctaw nation only; and if the said court

should also determine that the settlement and adjustment of the claim of the complainant and others was not a condition precedent to the acquiring of the right to prosecute the claim and receive remuneration therefor, under the said contract, then and in that case even by the terms of the contract itself, any moneys which came into the hands of the said McKee, by reason of the said contract or any subsequent arrangement founded thereon, the said McKee is bound in equity and justice to fully satisfy and pay over to this complainant a fair and just compensation for the services which he has heretofore rendered in that behalf.

That the said McKee ought to be charged as trustee holding funds for the benefit of this complainant.

21. This complainant is informed and believes that the Choctaw nation at its last general council passed certain acts or votes to the effect of appointing the said McKee the agent of the said nation to receive from the United States Treasury any sums of money which might be appropriated to pay the judgment of the Court of Claims, or at least 30 per centum thereof, and this complainant is informed and believes, and therefore states the fact to be that the said McKee has drawn from the United States Treasury the whole of the said 30 per centum of said judgment, and now holds
17 the same in his possession and exclusive control, and this complainant fears that said McKee may refuse again to adjust his claim upon said fund, and may depart the jurisdiction of this court, and carry with him said fund unless he shall be enjoined and restrained therefrom.

22. That other persons than those above mentioned claim to have rendered valuable and important services in the prosecution of said claim for net proceeds, and under such circumstances as to give them a legal and equitable right to a portion of said fund. This complainant is not able, however, to state the nature of said claims in detail, or even to give the names of such persons, and neither affirms or denies the fact as to whether any of said claims constitute a legal and equitable claim upon said fund; therefore this complainant asks leave, when he shall have discovered the said persons, that he may be allowed to make them parties hereto, and to insert herein apt words setting forth the claims of such persons as this complainant may be informed, in order that all such claims may be fully and finally determined and settled in this cause.

23. And the complainant further shows that since the rendition of the said judgment this complainant, by his counsel, requested the defendant McKee that he should ascertain, as near as might be possible for him to do, the amount of money which this complainant was to receive out of such judgment, if he should be entitled to anything, and to make some arrangement to secure the payment thereof, but the said McKee refused so to do.

24. That the defendant McKee, as the complainant is informed and believes and avers, is not a permanent resident or inhabitant of this District, but is only a sojourner here. That he owns no estate in this District or other property out of which a judgment or award could be levied and made, and this complainant does not

know whether or not it is the intention of said McKee to return to the State of Arkansas to resume his residence there. This complainant therefore submits that he is entitled to the protection of this court, and to its aid to prevent the said McKee from leaving the jurisdiction of the court, and to prevent him from taking the said fund or any part thereof beyond the jurisdiction of this court.

25. The said Ellen Cochrane, the widow of said John T. Cochrane, is made a party to this cause for the reason that she is named as one of the beneficiaries by the terms of the said agreement between said McKee and Blunt and the representatives of said nation, dated July 16, 1870; but this complainant does not admit, but denies, that she is entitled to receive any part of said 30 per centum fund by reason of said contract.

26. This complainant submits to the court that if the transfer of the interest of the estate of said Cochrane in said claim of said nation made by said McPherson to Black is for any reason invalid then and in that case the invalidity thereof cannot in anywise affect his rights in and to said fund, but on the contrary that he is entitled in equity and good conscience to be paid for his labor out of its proceeds, to wit, said judgment, and that said McKee, by virtue of said agreement, is a trustee for the benefit of this com-
18 plainant, and further that the rights of this complainant to be paid out of said 30 per centum fund is not subordinate but superior to that of said McKee and those claiming under him.

26. That it was agreed in 1866, by and between this complainant and the said Choctaw nation, that he should be paid a reasonable fee or compensation for services which he might render in the prosecution of the said claim of said nation for net proceeds, and that his services should be rendered in conjunction with the said John T. Cochrane. It was subsequently agreed by and between the said Cochrane and this complainant that such compensation should be paid to him out of the fee reserved and secured to said Cochrane by the contract between said nation and Cochrane, dated February 13, 1855, hereinbefore set out. But he says that no part of said compensation or anything on account thereof, has ever been paid to or received by him, and all thereof is still due and unpaid, and that he is fairly and reasonably entitled to demand and receive therefor $75,000 as agreed, as aforesaid, between him and said McPherson.

The complainant therefore prays as follows:

Prayers.

First. That the original writ of subpœna in the usual form may issue directed to the said Henry S. McKee, John D. McPherson, executor, &c., James P. Scott and Mrs. Thomas A. Scott, executors of Thomas A. Scott, deceased, and Ellen Cochrane (widow of John T. Cochrane), cammonding them and each of them to appear and answer this bill.

Second. That the writ of injunction may issue out of this court directed to the said defendant, Henry E. McKee, enjoining and re-

straining him, his agents, and attorneys, from removing or transferring the said fund of 30 per centum of said judgement, amounting to $923,548.58 so collected and received by him, or any part thereof, from or beyond the limits of the District of Columbia, and also restraining and prohibiting said defendant, Henry E. McKee, from departing from the District of Columbia on any pretext whatever without the leave of this court first had and obtained thereto.

Third. That so soon as the names of all persons interested in the said fund of 30 per centum (amounting to $923,548.58) shall be ascertained, that they shall be made parties hereto.

Fourth. That a receiver may be appointed by this court to take charge of the said 30 per centum fund collected by said McKee, and hold the same subject to the order of this court.

Fifth. That this complainant may be paid the sum of $75,000.00 out of said 30 per centum fund collected by said McKee.

Sixth. That the complainant may have such other and further relief as may be agreeable to equity and good conscience.

JNO. H. B. LATROBE.

ENOCH TOTTEN,
REGINALD FENDALL,
Solicitors for the Complainant.

19 STATE OF MARYLAND, *City of Baltimore*, } *ss:*

I, John H. B. Latrobe, do solemnly swear that I have heard read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

JNO. H. B. LATROBE.

Subscribed and sworn to in the said State and city by the above-named John H. B. Latrobe, before me, a justice of the peace in and for said city in said State, duly commissioned and qualified.

In witness whereof I have hereunto set my hand, this 12th day of July, A. D. 1888.

FRANK DE S. BENZINGER, *J. P.*

20 In the Supreme Court of the District of Columbia, July 13th, 1888.

JOHN H. B. LATROBE, Complainant, *against* HENRY E. McKEE *et als.*, Defendants. } No. 11248, Equity Docket 28.

The President of the United States to Henry E. McKee, John D. McPherson, executor of the last will and testament of John T. Cochrane, deceased; James S. Scott and Mrs. Thomas A. Scott, executors of the last will and testament of Thomas A. Scott, and Ellen Cochrane, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and

answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Copy of Indorsements and of Return and Service.

No. 11248, equity docket 28.

Spa. to ans. original bill.

21

JOHN H. B. LATROBE
vs.
HENRY E. McKEE.

Subpœna to answer issued July 13, 1888, returned Sept. 4, 1888. Served Henry E. McKee and Ellen Cochrane July 14, 1888. The others not to be found Sept. 4, 1888.

A. A. WILSON, *Marshal.*
R. FENDALL AND
E. TOTTEN.

Copy of Restraining Order.

The defendant is hereby restrained from removing the fund mentioned in said bill in the second prayer, as prayed in the within-mentioned bill, upon complainant's filing an undertaking with due security under rule 40 until further order be made, if at all, after a hearing, which is fixed for the 18th day of July, 1888, of which take notice.

By the court:

CHARLES P. JAMES, *Justice.*

NOTE.—No undertaking as required by rule 40 having been given by complainant, no restraining order was issued against defendant McKee.

22 *Answer of H. E. McKee. Filed September* 22, 1888. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, this — Day of ——.

JOHN H. B. LATROBE, Complainant,
vs.
HENRY E. MCKEE, JOHN D. MCPHERSON, Executor of the Last Will and Testament of Jno. T. Cochrane, Deceased; Jas. P. Scott and Mrs. Thos. A. Scott, Executors of the Last Will and Testament of Thomas A. Scott, Deceased, and Ellen Cochrane, Defendants.

The separate answer of Henry E. McKee, one of the defendants, to the bill of complaint of Jno. H. B. Latrobe, complainant.

This defendant, saving to himself all manner of benefit or advantage of exception and objection to the said complainant's bill, that can or may be had or taken to the many errors, uncertainties, or imperfections in the said bill contained, and denying the validity of the said bill in the manner and form as the said complainant has stated the same, and the jurisdiction of this court to entertain the same; and saving all benefit and advantage of said exceptions and objections, for answer to said bill, or so much thereof as defendant is advised that it is material or necessary for him to make answer unto, answering says as follows:

I. He admits the allegations of the first paragraph of complainant's bill, except that the names of all the executors of the estate of the late Thomas P. Scott are not stated or set forth in the first paragraph of complainant's bill.

II. This defendant, answering the second paragraph of said bill, admits that the United States was indebted to the Choctaw nation of Indians under various treaties entered into between
23 the United States and the said Choctaw nation between the years 1786 and 1830. He admits that the United States concluded a treaty with the Choctaw nation in the year 1855. He admits that the question of the liability of the United States to the said Choctaw nation was submitted to the Senate of the United States for determination. He believes that article 12 of the said treaty is correctly stated and set forth in the said paragraph of said bill, but he prays leave to refer to the said article on the hearing of this cause.

III. This defendant, further answering, admits that the Choctaw nation endeavored to bring about an adjustment of their said claim against the United States, and sent delegations to the legislative and executive departments of the Government at Washington for that purpose. He admits the passage by the Choctaw general council or legislature of the resolutions of the 9th of November, 1853, but whether the said resolutions are correctly set forth in the third paragraph of complainant's bill, this defendant is not advised, and he

prays leave to read the said resolutions as contained in the statutes of the Choctaw nation on the hearing of this cause. He denies that the said resolutions were passed by the Choctaw general council for the purpose of employing John T. Cochrane as the agent or attorney of the said nation, or that at the time of the passage of the said resolutions said Choctaw nation had any purpose or intention to employ the said Cochrane as the attorney for the prosecution of the said claim. He admits that the Choctaw general council passed the act set forth in said third paragraph of complainant's bill on the 10th day of November, 1854, but whether the same is correctly stated or set forth in said paragraph this defendant is not advised, and he prays leave to read the said act of November 10, 1854, as printed in the laws of the Choctaw nation, on hearing of this cause.

IV. This defendant, further answering, admits that the persons assuming to act as delegates for the Choctaw nation and professing to be acting under the authority conferred by the acts of November 9th, 1853, and November 10th, 1854, hereinbefore referred to, entered into an agreement with John T. Cochrane in regard to the future prosecution of the claim of the Choctaws against the United States. Defendant admits that the contract between the said Cochrane and the said persons acting on behalf of the Choctaw nation was in writing, but whether the same is correctly stated as set forth in said fourth paragraph of complainant's bill, this defendant is not advised, and should the same become material, on the hearing of this cause, he demands strict proof thereof, and the production of the original of said contract.

V. This defendant, further answering, denies that it is true as stated in complainant's bill, that the said John T. Cochrane entered upon his duties in connection with the prosecution of said claim very soon after the passage of the said resolution of November 9th, 1853; but on the contrary said Cochrane did not commence rendering services for the said Choctaw nation, in respect to the matters embraced in said act of November 9th, 1853, until subsequent to the date of the said contract, to wit, February 13th, 1855.

24 And he denies that the said Cochrane, as the representative and attorney of the Choctaws, succeeded in inducing the authorities of the United States to enter into the treaty of 1855. He denies that said Cochrane devoted his entire time to the preparation of the cause of the Choctaw nation for hearing before the Senate of the United States. He admits the said cause was heard by the Senate of the United States as required by article 11 of the treaty of 1855. He admits that the Senate of the United States, on the 9th day of March, 1859, rendered its judgment or award under the provision of said article of said treaty, but whether the resolutions adopted by the Senate as embracing its award and judgment are correctly stated and set forth in the said fifth paragraph of complainant's bill, this defendant is not advised, and if the same shall become material on the hearing of this cause, he prays leave to refer to the same.

VI. He admits the sixth paragraph of complainant's bill.

VII. This defendant, answering the seventh paragraph of complainant's bill, expressly denies that the said Choctaw nation, by its duly authorized legal representatives, or otherwise, employed the complainant as their counsel and professional adviser in all matters, including the "net-proceeds claim," so called, pertaining to their rights and claims against the United States; "but on the contrary, this defendant states that the complainant, if he was ever at any time employed by the Choctaw nation, for any purpose or in any professional capacity, was only employed to assist and advise with the authorities of the said nation in regard to the negotiation of the treaty of April 28th, 1866. He denies that the said complainant was ever authorized to act for or on behalf of the Choctaw nation in regard to the prosecution of what was known as and called the "net-proceeds claim;" or that he ever at any time had from the said Choctaw nation, or from any of its authorized agents, any authority in respect of the prosecution of the said "net-proceeds claim," either before the Congress of the United States or before any of the executive departments of the Government of the United States or elsewhere. He denies that the conclusion and negotiation of the treaty of April 28th, 1866, was the work of the said complainant or resulted from the negotiations made by the said complainant on behalf of the Choctaw nation. He denies that under the treaty of 1866 the claim for the "net proceeds" was secured or that it has been prosecuted to a successful conclusion by means of the provisions of the said treaty. As to whether or not the complainant has employed several persons to aid him in the prosecution of any business for the Choctaws, and become responsible to them for the payment of such sums as might be fair and reasonable for the services rendered by such persons, this defendant has no knowledge or information, and therefore denies the same. As to whether the complainant employed Douglass H. Cooper and Charles E. Mix to aid him in the business of prosecuting said claim, he has neither information nor knowledge, and denies the same. He expressly denies that the complainant devoted his time and professional services largely to the interests of the said nation, especially during the sessions of Congress.

25 VIII. Defendant denies the statements and allegations of the eighth paragraph of complainant's bill.

IX. He admits the statements contained in the ninth paragraph of complainant's bill.

X. He admits the allegations of the tenth paragraph of complainant's bill.

XI. As to the matters and things stated and set forth in the eleventh paragraph of complainant's bill, defendant has no knowledge or information, and should the same become material on the hearing of this cause he calls for strict proof thereof.

XII. He denies that the assignment of the contract made between said Choctaw nation and said John T. Cochrane to the said Jeremiah S. Black was reported by the Choctaw delegates to the general council of the tribe. He denies that the Choctaw general council on the 18th day of November, 1867, passed any act designed or in-

tended for the purpose of recognizing or ratifying the assignment of the said Cochrane contract by the executor of said Cochrane to the said J. S. Black. He admits the passage by the Choctaw general council of the act of November 18th, 1867, but whether the same is correctly stated and set forth in said paragraph of said bill this defendant is not advised, and should the same become material in the hearing of this cause, he prays leave to refer to the said statutes as printed in the Choctaw general laws.

XIII. He expressly denies the matters and things stated and set forth in the thirteenth paragraph of complainant's bill.

XIV. This defendant has no knowledge or information in regard to the matters and things stated and set forth in the fourteenth paragraph of complainant's bill, and should the same become material on the hearing of this cause, he demands proof thereof.

XV. This defendant has no knowledge or information in regard to the matters and things stated and set forth in the fifteenth paragraph of complainant's bill and he cannot therefore either admit or deny the same, but should the same become material in this hearing, he demands strict proof thereof.

XVI. This defendant admits the statements contained in the sixteenth paragraph of complainant's bill.

XVII. This defendant admits the statements contained in the seventeenth paragraph of complainant's bill.

XVIII. This defendant admits the statements contained in the eighteenth paragraph of complainant's bill.

XIX. This defendant admits that he made the contract with the Choctaw nation, which he believes to be substantially set forth in complainant's bill, dated the 16th day of July, 1870, but he expressly denies that said contract between this defendant and the said Choctaw nation was made while the said complainant and the said Black and others were engaged in the prosecution of the said claim, and this defendant avers that at the date of the contract, so made between the Choctaw nation and this defendant, there were no person or persons other than the delegates of the said
26 Choctaw nation prosecuting the said "net-proceeds claim" by the authority or under the direction of the Choctaw nation.

XX. This defendant denies the statements contained in the twentieth paragraph of complainant's bill.

XXI. This defendant denies the statements and allegations of the twenty-first paragraph of complainant's bill in manner and form as the same are therein stated and set forth.

XXII. This defendant states that as to the matters and things stated and set forth in the twenty-second paragraph of complainant's bill this defendant has no knowledge or information, and he can therefore neither admit nor deny the same, but if the same should become material on this hearing, he calls for strict proof thereof.

XXIII. This defendant denies the statement contained in the twenty-third paragraph of complainant's bill.

XXIV. This defendant denies the statements contained in the

twenty-fourth paragraph of complainant's bill in the manner and form as the same are therein stated and set forth.

XXV. This defendant can neither admit nor deny the allegations contained in the twenty-fifth paragraph of complainant's bill, because it states no fact upon which any issue could be formed material to this hearing, but erroneously states a conclusion of law.

XXVI. This defendant denies the statements contained in the twenty-sixth paragraph of complainant's bill, and in so far as the said paragraph states and sets forth conclusions at law, this defendant submits that he is not required either to admit or deny the same.

XXVII. This defendant, further answering the twenty-seventh paragraph, denies that it was agreed between the Choctaw nation and the complainant, that he, the complainant, should be paid a reasonable fee or compensation for services which he might render in the claim of said nation for the "net proceeds." He denies that it was agreed at that time, or at any other time, between the said nation and the said complainant that his services should be rendered in conjunction with the said John T. Cochrane. He denies that it was subsequently agreed by and between the said Cochrane and this complainant that such compensation should be paid to him out of the fee reserved and secured to said Cochrane, by the contract between said Choctaw nation and said Cochrane, dated February 13th, 1855. He denies that complainant is entitled to be paid the sum of seventy-five thousand dollars, as averred in the — paragraph of said bill, or that he is entitled to receive from this complainant any sum of money for or on account of the allegations or statements contained in the said paragraph of complainant's bill.

HENRY E. McKEE.

I, Henry E. McKee, one of the defendants named in the above-entitled cause, being duly sworn, on my oath state that I have read the foregoing answer, by me signed, and know the contents thereof. That the matters and things therein stated of and upon my own knowledge are true; and that as to those matters and things
27 therein stated and set forth upon information and belief, I believe the same to be true.

HENRY E. McKEE.

Sworn to and subscribed before me, this 15th day of September, 1888.

[SEAL.] PAUL F. CASTE,
Notary Public, City of St. Louis, Mo.

STATE OF MISSOURI, } ss:
City of Saint Louis, }

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis, the same being a court of record in and for said city and State, certify that Paul F. Caste, whose name is subscribed to the jurat certificate of the annexed instrument, dated the 15th day of September, 1888

was on said date a notary public in and for said city duly commissioned, qualified, and sworn, and authorized by the laws of this State to administer oaths and take the acknowledgments of deeds; that I am well acquainted with his handwriting and verily believe that the signature thereto is genuine, and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 15th day of September, eighteen hundred and eighty-eight.

PHILIP H. ZEPP,
Clerk Circuit Court.

Fee 50 cts. Rev. Statutes, 1879, sec. 5603.

Answer of Ellen Cochrane. Filed Oct. 2, 1888. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Sitting in Equity.

JOHN H. B. LATROBE
vs.
HENRY E. McKEE *et al.* } Eq. No. 11248.

Answer of Ellen Cochran.

1, 2, 3, 4, 5, & 6. The defendant, Ellen Cochran[e], for answer to paragraphs 1, 2, 3, 4, 5, & 6 of the bill, says that some of the facts stated in said paragraphs she knows to be true, other statements she believes to be true, and for the purposes of this case she is willing to admit the truth of all the statements in said six paragraphs.

7. Respondent says she has no knowledge of the employment of the plaintiff by the Choctaw nation after the close of the war of the rebellion, "as their counsel and professional adviser in all matters including the net-proceeds claim, so called, appertaining to their rights and claims against the United States, for which said nation agreed to pay him a reasonable compensation." She therefore denies the same.

28 Respondent says that on the 13th day of February, 1855, the legally authorized delegates of the Choctaw nation entered into a contract in writing (which is fully set out in the bill) with her late husband, John T. Cochran[e], by which he was employed as the attorney for said nation to prosecute certain claims of said nation against the United States, including the said net-proceeds claim, and by said contract the said John T. Cochran[e] was given "the exclusive control and management" thereof, and down to the time of his death, which occurred October 21, 1866, she understood, and so charges that the said John T. Cochran[e] had the exclusive management and control of the prosecution of said claim.

She says she does not know of her own knowledge who prepared the treaty referred to in the said paragraph seven, but she always understood that it was done by the said John T. Cochrane, and that he procured its ratification, and she therefore denies the statements of the plaintiff that he prepared said treaty.

As to what is said in paragraph seven, as to the employment by the plaintiff of other persons to assist him in his work for the Choctaw nation, this defendant knows nothing and neither admits nor denies, but demands strict proof.

8. As to what the plaintiff says in paragraph 8 of the bill, as to his services rendered the Choctaw nation, this defendant of her own knowledge knows nothing, and she therefore neither admits nor denies the same, but demands strict proof. But she emphatically denies that "upon the results of the labor performed by him, and the evidence prepared and submitted by him, the said claim was mainly based and was finally conducted to judgment and payment."

9. She does not deny the statement of paragraph 9 of the bill.

10. She admits that her husband, John T. Cochran[e], died October 21, 1866, and that the defendant, McPherson, was appointed and qualified as executor of his last will.

11. Respondent was informed that the said McPherson as executor of the said John T. Cochran[e], did enter into a contract with Jeremiah S. Black, but she does not know whether the contract as set out in the bill is the genuine contract or not, and she therefore neither admits nor denies the same, but demands proof thereof. And she knows nothing of the paper set out in the bill purporting to be an endorsement upon said contract by delegates of the Choctaw nation, conditionally assenting to and approving said contract. In further answering, she says that by the terms of said contract as set out in the bill, said Black "was to proceed with all diligence to procure from the United States an appropriation for the payment of the residue of said claim of the Choctaw nation."

She says that the said Black never obtained any appropriation for the payment of said Choctaw claim or any part thereof, and did nothing whatever as she is advised to practically advance the collection thereof, but became dissatisfied with the case and totally abandoned the prosecution thereof; and she is advised that if the contract between the said Black and McPherson as executor
29 of the said Cochran[e] was originally valid, the total failure to perform on the part of the said Black operated as a revocation of the contract.

The approval of the delegates of the Choctaw nation of said contract, as set out in the bill, was provisional upon the performance upon the part of the said Black of his part of the contract.

Respondent says that she is advised that from the time of the abandonment of said case by the said Black, he ceased to have any right to fees or compensation for services under said McPherson contract.

12. Respondent knows nothing of the act of the council set out in the 12th paragraph of the bill, and neither admits nor denies that it was passed, but if it was legally enacted by the legislative council of the Choctaw nation, and is still in force as is assumed by the bill, the plaintiff could not maintain this or any other suit, either at law or in equity, to collect compensation for services rendered under the Choctaw contract until the delegates has reported her claim to the attorney of the nation and he had investigated

and reported upon it to the principal chief of the nation, and its payment had been authorized either by said principal chief or by the council of the nation. The plaintiff does not pretend that the claim set up in this bill was ever submitted in any way to the delegates of the nation or by them reported to the national attorney, or that it was ever in any way submitted to any of the authorities of said nation for investigation, approval, adjustment, or payment.

13. Respondent knows nothing of the agreement between said McPherson and plaintiff set out in paragraph 13 of the bill, and she can neither admit nor deny the same; but she denies the right or power of the said McPherson as executor of her late husband, John T. Cochran[e], to make such a contract, binding upon her, as one of the legatees, under the will of the said Cochran[e].

Respondent has no personal knowledge of the services rendered by the plaintiff, as claimed in the 13th paragraph of the bill, and can therefore neither admit nor deny the same, but if it shall become necessary, she demands strict proof. Upon information and belief she denies that the ultimate success of the case is due to the services of the plaintiff, as stated in said paragraph.

14. Respondent admits the statement of the 14th paragraph to be true.

15. Respondent does not know whether the contract between Black, McPherson, and Scott is correctly set out in paragraph 15 or not, and neither admits nor denies the same.

16, 17, & 18. Respondent is willing to admit the truth of the 16th, 17th, & 18th paragraphs of the bill.

19. Respondent, upon information and belief denies that the defendant McKee procured his contract, set out in paragraph 19, while the complainant Black and others were engaged in the prosecution of said claim. But she says she is informed and believes, and so charges that the said Black had long before that abandoned the case, and that complainant had done nothing to forward the collection of the "net-proceeds" claim for a long time; she believes the contract of said McKee is truly set out in said paragraph 19.

20. Respondent, upon advice of her counsel, denies the conclusions of law in the twentieth paragraph of the bill.

21. Respondent has no personal knowledge as to what action was taken by the Choctaw nation as to authorizing McKee to draw the thirty per cent. of the judgment against the United States; but is informed that he has drawn twenty-five per cent. of the said judgment, but upon the advice of counsel she denies that the fears of plaintiff, that McKee will not adjust his claim, gives any jurisdiction of this court to entertain this suit.

22. Respondent is infoamed that quite a number of persons, to her unknown, claim to have rendered valuable services in connection with prosecution of "net-proceeds" claim.

23. Respondent knows nothing as to the matters set out in paragraphs 23 of the bill, and neither admits [n]or denies the same.

24. Respondent has no personal knowledge as to the matters stated in paragraph 24 of the bill, and neither admits nor denies

the same; upon the advice of counsel, respondent says that the plaintiff has made no case in this bill which gives him a lien upon said fund or any right to maintain this suit.

25. By the contract between the delegates of the Choctaw nation and Blunt and McKee, under which McKee received the money from the Treasury, it is expressly provided "the said Blunt and McKee to pay Mrs. John T. Cochran[e], of Washington city, D. C., (5) per centum from the (30) thirty per centum before referred to, whenever they shall receive the same."

And respondent is advised that she is entitled in her own right to receive from said McKee and that he is legally and equitably bound to pay to her the said five per centum upon the amount of the said Choctaw judgment, from the money which he has received from the Treasury.

26. Respondent upon the advice of her counsel denies the legal conclusion of the 26th paragraph of the bill.

27. Respondent has no personal knowledge as to any agreement by the Choctaw nation as to compensating plaintiff for services to be rendered by him in the "net-proceeds" case; but on information and belief she denies that he ever was employed by the said nation in said "net-proceeds" case, or that said nation ever agreed to compensate him for such services to be rendered in conjunction with the said John T. Cochran[e], and she denies that "it was subsequently agreed by and between the said Cochran[e] and this complainant that such compensation should be paid to him out of the fee reserved and secured to said Cochran[e] by the contract between the said nation and Cochran[e], dated February 13, 1855," and she denies that the plaintiff is entitled to receive $75,000 as agreed between him and McPherson.

28. Respondent says that the plaintiff cannot maintain his bill because the cause of action set out therein did not accrue within the three years next before the bringing of this suit, and she claims the same benefit thereof as though she had specially pleaded the statute of limitation.

22. And, further answering, respondent submits that the
31 plaintiff in his bill has not shown any such case as entitles him to maintain this suit, and she prays the same benefit as though she had demurred to the bill.

And having fully answered, respondent prays that the bill may be dismissed.

ELLEN COCHRANE.

I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

ELLEN COCHRANE.

Sworn to and subscribed before me this 2nd day of October, A. D. 1888.

[SEAL.]

L. I. O'NEAL,
Notary Public.

Answer of John D. McPherson. Filed Oct. 4, 1888. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.*

The separate answer of John D. McPherson, executor of John T. Cochrane, deceased.

1, 2, 3, 4, 5, 6. This defendant admits paragraphs one to six, inclusive, except as to the documents therein recited and referred to, as to which this defendant refers to the originals, though he has no reason to doubt the correctness of so much of said documents as is set — in said paragraphs.

7, 8. This defendant has no knowledge of the terms of the employment of complainant by the Choctaw nation or the details of the services rendered by him, and can therefore neither admit nor deny the allegations of the seventh and eighth paragraphs of complainant's bill in regard to said terms and details, but this defendant, on information and belief, admits that the complainant was employed by the Choctaw nation and did render valuable services.

9, 10, 11, 12. This defendant admits paragraphs nine to twelve, both inclusive, except as to the documents therein recited and referred to, as to which this defendant refers to the originals, though he has no reason to doubt the correctness of so much of said documents as is set out in said paragraphs.

13. This defendant admits the allegations of the thirteenth paragraph of the bill except as to the two following particulars:

First. This defendant does not admit, but denies, that the said sum of seventy-five thousand dollars agreed upon by the
32 complainant with Jeremiah S. Black and this defendant, was to be paid out of the first moneys which should be received by him, said McPherson, of, or on account of, said claim of said Choctaw nation against the United States, but to the contrary thereof he avers that the said seventy-five thousand dollars were to be paid out of the first moneys that shall thereafter come into the hands of this defendant as executor of John T. Cochrane under the contract between him and Jeremiah S. Black, and not otherwise, and in confirmation of defendant's averment he annexes to his answer, as Exhibit J. D. M., No. 1, a copy of an agreement signed by himself and the complainant stating the true intent and meaning of the result of the complainant's conversations and treaties with said McPherson and Black referred to in the bill in this particular.

Second. This defendant admits the fact that complainant did render some services as stated in the latter portion of said paragraph thirteen, but he does not know and cannot admit the details of such services, as set forth in said paragraph.

14. This defendant admits the fourteenth paragraph of the bill except so much thereof as states that the late Thomas A. Scott became interested with this defendant in the said claim, otherwise than that they both were to receive money from the said fund when it should be recovered under the Black contract.

15, 16, 17, 18, 19. This defendant admits paragraphs fifteen to nineteen, both inclusive, except as to the documents therein recited and referred to, as to which this defendant refers to the originals, though he has no reason to doubt the correctness of so much of said documents as is set out in said paragraphs.

20. This defendant is advised that the twentieth paragraph of complainant's bill contains only matters of law which he submits to the court.

21. This defendant admits the twenty-first paragraph of the bill, except so much thereof as alleges that the said McKee drew thirty per centum of the net-proceeds judgment from the Treasury of the United States, and avers that the said McKee drew only twenty-five per centum.

22. This defendant on information and belief admits the facts stated in the twenty-second paragraph of bill.

23. As to the allegations of paragraph twenty-three this defendant has no knowledge.

24. This defendant on information and belief admits the facts stated in paragraph twenty-four of the bill.

25. This defendant admits that Ellen Cochrane is the widow of John T. Cochrane, and is one of the beneficiaries by the terms of the contract between McKee and the representatives of the Choctaw nation.

26. Paragraph twenty-six contains only matters of law which this defendant submits to the court.

26 B. This defendant knows nothing of the terms of any agreement between the complainant and the Choctaw nation of 1866, or the terms of the agreement of the said complainant with the
33 said John T. Cochrane, though he believes there were such agreements; but he denies that under either of said agreements said complainant is entitled to the sum of seventy-five thousand dollars claimed in said paragraph, and avers that said complainant is only entitled to said sum of seventy-five thousand dollars out of the first moneys that shall hereafter come in the hands of this defendant as executor of John T. Cochrane, under the contract between him and Jeremiah S. Black, and not otherwise.

This defendant states on information and belief that one Charles S. Stettauer, who is made a defendant to a bill of interpleader filed by Henry E. McKee in this court, No. 11262, to which bill this defendant and also the complainant are parties, claims that he is entitled to receive the aforesaid seventy-five thousand dollars instead of the complainant. This defendant knows nothing of said Stettauer's right in the premises, but submits that if he has any right or title and claim in the premises he should be made a party defendant thereto.

This defendant having fully answered prays to be hence dismissed with all his costs.

JNO. D. McPHERSON,
Executor of J. T. Cochrane.

GEO. F. APPLEBY,
CALDERON CARLISLE,
Solicitors.

I do solemnly swear that I have read the annexed and aforegoing answer by me subscribed, and know the contents thereof, and that the matters and things therein stated on my personal knowledge are true, and those stated upon information and belief, I believe to be true.

JNO. D. McPHERSON.

Subscribed and sworn to before me this fourth day of October, A. D. 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

EXHIBIT J. D. M. No. 1.

Whereas an agreement has been this day entered into between the undersigned, stipulating for the payment to John H. B. Latrobe, one of the parties, of seventy-five thousand dollars ($75,000) in consideration of the services in the said agreement mentioned, and as is therein set forth, it is now declared to be the understanding of the undersigned that the said seventy-five thousand dollars is to be paid out of the first moneys that shall hereafter come into the hands of the undersigned executor of John T. Cochrane under the contract between him and Jeremiah S. Black, and not otherwise.

Given under our hands this 14th day of September, A. D. 1867, in duplicate.

[U. S. internal revenue stamp, 5c.]

JNO. H. B. LATROBE.
JNO. D. McPHERSON.

Witness:
R. W. McPHERSON.

34 (Copy.)

In the Supreme Court of the District of Columbia, Nov. 17th, 1888.

JOHN H. B. LATROBE
vs.
HENRY E. McKEE *et al.* } Equity. No. 11248.

The complainant joins issue with the defendants, John D. McPherson, executor, Ellen Cochrane, and Henry E. McKee, on their respective answers.

ENOCH TOTTEN,
REGINALD FENDALL,
For Complainant.

[Endorsed:] (Copy.) Equity. No. 11248. John H. B. Latrobe *vs.* Henry E. McKee *et al.* Complainant's joinder of issue. Filed Nov. 17, 1888. R. J. Meigs, clerk. Enoch Totten, Reginald Fendall, for complainant.

35–37 Filed Mar. 25, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, this 25th Day of March, 1889.

JOHN H. B. LATROBE *vs.* HENRY E. MCKEE *et als.* } Equity. No. 11248, Doc. 28.

On motion of the defendant Henry E. McKee, it is ordered that the complainant take and file his testimony herein within thirty days from this date; that the defendants complete their testimony within ten days after the expiration of said thirty days, and that the complainant complete his testimony in rebuttal within ten days after the testimony for defendants has been completed.

W. S. COX, *J.*

* * * * * * *

38 Filed May 4th, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court, the 4th Day of May, A. D. 1889.

LATROBE *v.* McKEE *et al.* } No. 11248.

Ordered that the motion of the defendant McKee to dismiss this cause for want of prosecution be, and the same is hereby, overruled.

W. S. COX, *J.*

39 *Answer of Executors of Thomas A. Scott. Filed May* 14, 1889. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE, Complainant, *v.* HENRY E. MCKEE, JOHN D. MCPHERSON, Executor of the Last Will and Testament of John T. Cochrane, Deceased; James P. Scott and Mrs. Thomas A. Scott, Executors of the Last Will and Testament of Thomas A. Scott, Deceased, and Ellen Cochrane, Defendants. } Equity. No. 11248.

Answer of James P. Scott, Anna D. Scott, and Miriam D. Thropp, executor and executrices of Thomas A. Scott, deceased.

1. They admit the allegations of paragraph 1, except as to the statement of the names of the executors of Thomas A. Scott (the

correct names are James P. Scott, Anna D. Scott, widow of Thomas A. Scott, and Miriam D. Thropp. They ask that the last named be made a defendant in the cause); and except the statement as to the residence of Henry E. McKee, as to which respondents are not informed.

2. Respondents admit that in 1852 the United States were justly indebted to the Choctaw nation of Indians, by reason of the several treaties theretofore entered into between the United States and said nation, but respondents do not admit that said indebtedness rested solely on a liability to account for the net proceeds of certain lands. They admit that a treaty was entered into in 1885, and that article 21 of the same is correctly set out in the second paragraph.

3. Respondents admit the allegations of the third paragraph, except so much of the resolutions of November 10, 1854, as relate to D. H. Cooper, and being uninformed they deny that said clause was part of said resolutions, and call for strict proof.

4, 5, 6. They admit the allegations of paragraphs 4, 5, and 6.

7, 8. Respondents have no information as to the allegations of paragraphs seven and eight, and deny the same and call for strict proof.

9, 10, 11, 12. Respondents admit the allegations of paragraphs nine, ten, eleven, and twelve.

13. Respondents are not informed as to the allegations in paragraph 13, and therefore deny the same and call for strict proof.

14. Respondents admit that they claim an interest in the thirty per cent. provided by the contract between the Choctaw nation of Indians and John T. Cochrane, deceased, and set forth in complainant's bill, and they claim an interest in any sums of money to be paid on account of the services rendered by said John T. Cochrane to the said nation, and respondents state their claim as follows:

A short while prior to his death, John T. Cochrane became very solicitous to realize the amount of compensation then due him from the Choctaw nation, and the further sums that would become due to him as compensation for the services already rendered by him to the nation, and thus secure some provision for the support of his family. At that time he had obtained the Senate award, and an estimate for an appropriation to pay such award had been made by the Secretary of the Interior, and a partial appropriation had been made by Congress.

Before he had consummated any arrangement to this effect, Cochrane departed this life, leaving a will in which he empowered his executor to make such a disposition of his claim. The matter having been laid by the executor before respondents' testator, Thomas A. Scott, he consented to and did advance to the executor the sum of $75,000 on the agreement that he should be reimbursed for the same out of the first moneys received on account of the thirty per cent. stipulated by the Choctaw nation to be paid Cochrane or his assigns.

Previous thereto the assignment to J. S. Black had been made by McPherson, which assignment had been approved by the delegates

of the Choctaw nation, and the entire transaction including the payment by Scott, was with their knowledge and consent. It was the expectation of all that the collection of the award would be made by Black, and that he would make the distribution of the same as demanded by the agreement of the parties, one of which was, that he was to reimburse Scott his advance before any other payment was made.

Some years subsequent to the transaction narrated, the said J. S. Black found embarrassments thrown in the way of his collection of the award which were likely to prove prejudical to the same. He had been led to suppose when he undertook the collection that his right to do so would be undisputed, and that in case of collection, the only claims upon the money would be those specified in his assignment.

Instead of this being the case, he found there were others claiming to occupy the position which he had been told he alone would be entitled to occupy. Claims were also set up to share in the fee to be collected other than those provided for in his contracts. The result of this finally was that he consented to retire from the management of the case if he would be assured by all the parties in interest that whoever should have the collection would reimburse Thomas A. Scott for the $75,000 advanced, as provided in his contract. This assurance was duly given to the said Black by all the parties in interest, and particularly by the defendant McKee, the delegates of the Choctaw nation, and the executor of Cochrane.

Thenceforth the said Black was only known in the case as the representative of Thomas A. Scott. As showing the relations held by the said Black to the testator of these respondents, they hereto attach a letter written by the said Black to James P. Scott, one of these respondents, marked Exhibit A.

15. Respondents admit the allegations of paragraph 15.

16. Respondents admit that Jeremiah S. Black is dead.

17, 18, 19. Respondents admit the allegations of paragraphs 17, 18, and 19.

41 20. As to the legal questions suggested in paragraph 20, respondents do not feel themselves obliged to answer.

21. Respondents admit that the Choctaw nation at its general council last past before the filing of this bill passed certain acts or votes with reference to the payment by said Henry E. McKee of certain sums from the amount appropriated to pay the judgment by said Choctaw nation, but respondents are informed and believe that said McKee drew thereunder from the Treasury of the United States the sum of $— of which he has paid into this court in another cause the sum of —.

22. Respondents do not feel called upon to answer the allegations in paragraph 22.

23. Respondents have no information as to the allegations in paragraph 23, and therefore deny the same and call for strict proof.

24. Respondents admit the allegations in paragraph 24.

25, 26. Respondents do not feel called upon to answer paragraphs 25 and 26.

26 vis. Respondents have no information as to the allegations in paragraph 26½, and deny the same and call for strict proof.

Respondents insist that they are entitled to have paid to them $75,000 with interest from November 8, 1866, at six per cent., out of any moneys payable under the Cochrane contract before any sums are paid out of such moneys to any of the parties to this litigation or to any one else, and that they have a similar priority out of any moneys payable on account of the services rendered by said John T. Cochrane to the said Choctaw nation of Indians.

Respondents pray the decision of the court upon the validity and priority of the several claims involved in this litigation.

ANNA D. SCOTT.
JAMES P. SCOTT.
MIRIAM D. THROPP.

W. HALLETT PHILLIPS,
Sol. for Def'ts.

Personally appeared before me, a notary public of Pennsylvania in and for the city of Philadelphia, James P. Scott, Anna D. Scott, and Miriam D. Thropp, with whom I am personally acquainted, and made oath that the matters and things stated in the foregoing answer as of their own knowledge are true, and those matters and things therein state- on the information of others, he believes to be true.

Sworn to and subscribed before me this —.

JOHN RODGERS,
Notary Public.

EXHIBIT "A."

YORK, *March* 27, 1883.

MY DEAR SIR: I have been absent for some time or else you should have had an earlier answer. Colonel Scott bought and paid for a portion of the Choctaw claim. I told him that there was no reason to believe that it would not be paid immediately or very soon, and my advice was based on the assurance of the Sec-
42 retary of the Interior and the Commissioner of Indian Affairs that an appropriation would be estimated for and sure to be made.

Coupled with the sale to Colonel Scott (or perhaps I should say simultaneously) was a request from the Choctaw nation that I should act as their trustee, receive their money, and see that it was properly paid to them or their creditors or assignees, for which they promised me, I do not know what, but it was a large compensation, so large that I was surprised by the offer, and for a time doubted the good faith of it. It was, however, put into writing, as well as the assignment to Colonel Scott.

Within a few weeks afterwards, I was infinitely surprised to learn that divers other persons claimed a right to the place which I had thought I had occupied alone. I could not keep them out and I could not stay in with them. In fact the whole lobby took after me

and the Indians. The chiefs surrendered and so did I. The lobby had its own way and I went wholly out of the case. I threw up my contract and was released by the Indians, who did not come near me again. But then and ever afterwards to the Indians, red and white, and to the lobby, of all colors, I gave notice that I would guard Colonel Scott's rights at all points wherever I thought them in danger. I had unwittingly led him into the bargain, and I could not conscientiously see him suffer by it. In any other way or for any other purpose I would have nothing to do with the business.

Lamon was nominally a partner of mine when the Indians retained me, and the contract with them or their representative was probably made in the name of the firm, but after the contract was dissolved and the partnership too, he made terms with the lobby and they took him in with them. I told him I was in only for Colonel Scott, but he could do as he pleased in regard to the others. I did not know until I learned through you that he had carried away the papers. Nor do I now see what use anybody can make of them. Your right to a certain portion of the money when received will not be disputed, I think, and if it be, it will be easily established without the production of the formal assignment. Certainly there is nothing in that document which gives him an interest in it. Observe, I was never employed by Colonel Scott—had no contract with him unless contract be implied by my acts in his behalf, done with his knowledge and approbation, but I feel, as I have always felt, that I am bound to see justice done to him and his family, including R. D. Barclay.

When this is accomplished you may do what is proper in your own eyes with me. This is a long preface, but I am anxious that you should understand me. I answer the direct question whether I have charge of the case thus:

I am known to the other parties as the representative of Colonel Scott's interest. I expect to be so recognized by you and will do my duty accordingly.

I am, yours truly,

(Signed) J. S. BLACK.

43 Filed May 27, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, this 23rd Day of May, 1889.

JOHN H. B. LATROBE *vs.* HENRY E. McKEE *et als.* } Equity. No. 11248, Doc. 28.

And now comes the defendant Henry E. McKee, by his solicitors, and moves the court to dismiss the complainant's bill herein for the reasons following, to wit:

1st. Because neither the said bill nor any paragraph thereof states, sets forth, or shows to the court by any statement or averment thereof any cause of action against the defendant Henry E. McKee of which this court has jurisdiction.

2nd. Because the complainant's bill, if it states and sets forth any cause of action against any person or persons whomsoever, states and sets forth a cause of action against the Choctaw nation of Indians, and of that nation or of suits against said nation this court has no jurisdiction.

3rd. Because the fund which it is sought to subject to the jurisdiction of this suit by means of the complainant's bill was and is a fund subject to the exclusive control and disposition of the political department of the United States, and was appropriated by Congress in fulfillment of treaty stipulations with the Choctaw nation
44 of Indians, and is, therefore, not subject to the control or jurisdiction of the judicial department of the Government.

4th. Because the said complainant's bill, if it states and sets forth any cause of action against the defendant Henry E. McKee, shows that the exclusive remidy upon and for such cause of action is at law, and not in equity.

5th. Because no cause of action against the defendant Henry E. McKee results from or arises upon the said several contracts or agreements set out in complainant's bill made between the Choctaw nation and John T. Cochrane or between the Choctaw nation and the complainant or between John T. Cochrane and the complainant or between John D. McPherson, executor of John T. Cochrane, and the complainant, and no cause of action, either at law or in equity, can arise from or grow out of said contracts which can be maintained against the defendant McKee either at law or in equity.

B. F. RICE,
JEFF. CHANDLER,
Sol'rs for Defendant Henry E. McKee.

45 Filed May 27, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.* } Eq. No. 11248.

Order.

This cause coming on to be heard upon the motion of the said defendants, this day filed, to dismiss the said complainant's bill herein, it is, upon consideration thereof, this 27th day of May, 1889, ordered, adjudged, and decreed that the said motion be, and hereby is, overruled.

W. S. COX, *J.*

46 Filed May 27, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, this 27th Day of May, 1889.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } Equity. No. 11248.

The motion of the defendant McKee to dismiss the complainant's bill for the reasons stated in the motion herein filed on this date, having been heard and considered by the court, is hereby denied and overruled without prejudice.

W. S. COX, *J.*

47 Filed Oct. 29, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.* } Equity. No. 11248.

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that at an examination of witnesses begun and held on the 9 day of May, A. D. 1889, and continued from time to time until the 30 day of May, A. D. 1889, when the within deposition was taken, I, Mason N. Richardson, an examiner in chancery, did cause to be personally present to testify for and on behalf of himself in the above-entitled cause-in-chief, with due and sufficient notice to counsel for all parties, as appears by the notice hereto annexed.

MASON N. RICHARDSON,
Examiner in Chancery.

WASHINGTON, D. C., *May 9th*, 1889—2 o'clock p. m.

Met pursuant to notice to counsel for all the parties hereto annexed, at the office of Reginald Fendall, Esq., "Fendall building," in the city of Washington, District of Columbia, to take testimony for and on behalf of John H. B. Latrobe, in the above-entitled cause.

Present for and on behalf of the complainant: John H. B. Latrobe, Reginald Fendall, Esq., and E. Totten, Esq.

W. H. Phillips, Esq., appeared for and on behalf of Scott's executors.

J. J. Weed, Esq., appeared for and on behalf of McKee. Present also the examiner.

Whereupon the taking of testimony in the above cause was adjourned until May 15th, 1889, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *May* 15, 1889—2 o'clock p. m.

Met pursuant to adjournment, at the office of Reginald Fendall, Esq., "Fendall building," in the city of Washington, District of Columbia, to take testimony for and on behalf of John H. B. Latrobe, in the above-entitled cause.

Present for and on behalf of the complainant: John H. B. Latrobe, Reginald Fendall, Esq., and E. Totten, Esq.

J. J. Weed, Esq., appeared for and on behalf of McKee.

W. H. Phillips appeared for and on behalf of Scott's executors.

Messrs. Appleby and Carlisle appeared for and on behalf of John D. McPherson.

Present also the examiner, Mr. M. N. Richardson, and witnesses.

Whereupon, JOHN H. B. LATROBE, a witness of lawful age, being by me first duly sworn for and on behalf of himself, testifies as follows:

48 By Mr. TOTTEN:

Q. Mr. Latrobe, will you give me your name?

A. John H. B. Latrobe.

Q. Your residence?

A. My residence is in Baltimore, Md.

Q. What is your occupation?

A. My age—on the last 4th of May I was 86. Therefore, I am now in the 86th year.

Q. You reside in Baltimore, Md.?

A. Yes, sir; I have resided there for some years.

Q. You are a lawyer; how long have you been practicing law?

A. Well, since I was 21 years of age. Well, from 21 to 86, which is 65 years.

Q. You are one of the defendants in the case of Lamon against McKee, equity No. 11238, Mr. Latrobe?

A. I have been told so.

Q. And you are also a defendant in the case of McKee *vs.* Cochrane, equity No. 11262?

A. I am told so.

Q. And you are the plaintiff in the case of John H. B. Latrobe *vs.* McKee, equity No. 11248?

A. That is so.

Q. Did you know John T. Cochrane during his lifetime?

A. I did.

Q. Where did he reside?

A. Well, he resided in Washington when I knew him.

Q. In what business was he engaged?

A. Oh, I don't know, sir; excepting that he had something to do with the Indian affairs, but his other business I do not know.

Q. Do you know anything about the claim of the Choctaw nation against the United States Government, known as the "net-proceeds claim"?

A. Yes, sir.

Q. When did you first have any connection with that business,

as nearly as you can recollect or get at it? I wish you would give the date, Mr. Latrobe.

A. Immediately after the war, General Douglass H. C[o]oper brought to my residence near Baltimore a delegation of Indians consisting of Choctaws and Chickasaws on their way to Washington. In talking over their business then, I found that they believed that all their treaties with the Government had been abrogated by the war that had just ended. I expressed some doubts upon that point, and said that I would look into the matter. After spending a night with me they continued their journey. A short time afterwards, at the instance of Mr. Cooper, I called upon them at their lodgings, and told them that I had made up my mind that their treaties had not been abrogated by the war, that the right had been given to the President to abrogate them by proclamation, but that he had not done so. That the occasion had passed and that the treaties were still in force. They seemed very much gratified. How I
49 became employed or when I was employed I do not remember, but I became from that time their counsel, and I remained at the Metropolitan hotel in Washington for the greater part of the winter, where I was in frequent consultation with them. It was while I was in Washington that winter that I framed the treaty of 1866.

Q. You say that you framed that treaty that winter?

A. I framed the treaty that winter. I framed it out of my own head. They gave me some memorandum from the Interior Department which I laid aside, and framed the treaty from my own notions and opinions of what the treaty ought to contain. I had a great deal of intercourse during this time with Mr. Cooley, and on several occasions saw Mr. Harlan.

Q. Who was Mr. Cooley?

A. I think he was Commissioner of Indian Affairs.

Q. A Commissioner of Indian Affairs?

A. Yes, sir; I suppose so.

Q. His name was D. N. Cooley?

A. Yes, sir; Cooley was his name.

Q. Who was Harlan?

A. Secretary of the Interior; and it was to Mr. Harlan that I first communicated the fact of my employment by the Indians, and when I had completed the treaty I read it over to him carefully, every portion of it; and explained my views in regard to it, especially in regard to a clause that I took a great deal of interest in. I wanted the Indians to hold their lands in severalty.

After the treaty was signed, my recollection is, that I went to Mr. Doolittle, chairman of the Committee of Indian Affairs, in regard to it. I also had intercourse with Cochrane, with Cooley, and with Mr. Doolittle, in this connection.

Q. Doolittle was a Senator of the United States, was he not?

A. He was a Senator of the United States, from the West, and he was the person who managed the matter in the Senate.

Q. That treaty of which you have been speaking is known as what treaty?

A. I have always called it the treaty of 1866, myself. It was during the winter of 1865–'6 that I first became acquainted with Cochrane.

Q. Did you make any arrangements with Cochrane at that time or about that time in reference to the business of the Choctaw nation; if you did please state what it was?

A. The whole of this is in writing, and I refer to a statement in writing already made by me which you have, and which is given at page 7 of the pamphlet exhibit.

Q. Well, I think, Mr. Latrobe, that there is nothing in writing in relation to your contract with Mr. Cochrane?

A. No, sir.

Q. Have you made any arrangements, and if you made any arrangements with Cochrane about that time on this subject, I wish you would state what it was?

A. I am speaking from memory and I may be mistaken, but my belief at this moment is, that after the treaty was negotiated, and after that part of my business, during which I represented the Indians, Choctaws and Chickasaws, Mr. Cochrane apparently influenced by what I had already done, told me of his having a contract with the Indians for 30 per cent. of the net proceeds and it was then that he asked me to aid him. One of the clauses of the treaty of 1866 provided for the recognition of the existing contracts between the Indians and the Government. I then considered myself interested with Mr. Cochrane and General D. H. Cooper in the net proceeds of the claim to the extent of Mr. Cochrane's interest in it.

Q. What were the terms of the arrangement between you and Mr. Cochrane, if you remember them?

A. Well, now, I think that is in writing, too. I think that is in writing. But my recollection is that of a man——

Mr. WEED: I object to his stating his recollection of the contract, if it is in writing, and he is certain that it is in writing.

WITNESS: I say that some agreement is in writing.

Mr. TOTTEN: No, there is no agreement in writing on that subject.

Q. Give us your best recollection of it, Mr. Latrobe, if you please.

A. My recollection of it is that Mr. Cooper and Mr. Cochrane and I were present together when Mr. Cochrane spoke of the net-proceeds claim, and said that he wanted me to aid him in the prosecution of it, and I agreed to help him, and whether anything was in writing at that time, I do not know.

Q. Do you remember what portion of this 33 per cent. he was to give you?

A. Yes, sir; it was to be divided equally between Cochrane, Cooper, and myself.

Q. Equally?

A. Yes, sir; equally.

Q. Equally?

A. Yes, sir.

Q. That was about how long after the negotiation and conclusion of this treaty of '66?

A. I cannot remember that.

Q. Can you not approximate to the date when this happened?

A. I cannot pretend to say.

Q. Was it soon afterwards?

A. All that I can say is that I believe that Mr. Cochrane's agreement with me grew out of the interest I took in the matter, and he thought I could carry out.

Q. What further service did you render, Mr. Latrobe, in reference to this net proceeds?

A. Mr. Cochrane did not seem to be a literatery man at all. I did the literary work. I may say I did the law. I wrote the papers, some of which are here.

Q. Do you mean to say that you did the work that pertains to the professional part of it?

A. That is it, sir. I did that work. I lived in Baltimore,
51 and while the treaty was being negotiated I was constantly down in Washington in contact with the Indians—Chickasaws and Choctaws—though this refers mainly to the negotiation of the treaty, and not to the net proceeds.

Q. Did you have any further arrangement with the Indians in reference to the net-proceeds claim?

A. Well, I do not recollect now. I do not recollect the details sufficiently to say.

Q. Were you in correspondence with the Indian nation?

A. I was. I got letters from Mr. Wright, some of which I had forgotten, until I came here, and they were shown to me by Mr. Fendall. Mr. Fendall showed me letters among the papers which he had, and I saw my letters to Mr. Wright. With Mr. Wright I was quite intimate, I might say.

Q. Will you explain to us who Mr. Wright was?

A. Mr. Wright was principal chief of the Choctaw nation.

Q. What was his first name?

A. Allen Wright.

Q. Who was the preceding principal chief of the nation; do you know?

A. I do not know that; I did know; I no doubt knew at the time, but I cannot recollect; I do not recollect.

Q. I show you now a letter addressed to Messrs. Pitchlynn and J. Folsom, Choctaw delegates, dated March 29th, 1867, at the executive office, Boggy depot, Choctaw nation; signed, apparently, by Allen Wright, principal chief Choctaw nation; I wish you would look at that and say in whose handwriting that letter is.

A. It is in Allen Wright's handwriting.

Q. Whose signature is that?

A. The signature is unquestionable that of Allen Wright, and my belief is that the body of the letter is in his handwriting.

Q. Are you acquainted with his handwriting?

A. I have seen him write, and I have corresponded with him.

Col. TOTTEN: I offer that letter in evidence, and ask that the same may be marked Exhibit One. A copy of the letter may be inserted in the record, and the original will be produced at the hearing.

The following is a true copy of the above letter:

"EXECUTIVE OFFICE, BOGGY DEPOT, C. N., *March* 29, 1867.

Messrs. Pitchlynn and J. Folsom, Choctaw delegates:

An unofficial letter, under date of the 4th inst., from Mr. Israel Folsom has been received, in which I am informed that an appropriation for the Choctaws under a deficiency bill has been defeated. From all the sources of information I can get in regard to that particular business, that if that particular section touching the Choctaw business had not been "struck out" it would have relinquished all claims of the Choctaws, both national and individual, brought against the Government of the United States prior to the treaty ratified June 28th, 1866.

52 It seems in order to get net-proceed claim through, all and every interest of the Choctaws have to be sacrificed.

And an attorney engaged by a written contract, by late delegation which was approved by late general council of the Choctaw nation, was ignored by you, and employed a new set of speculators, who know no Choctaw interest, but their own, who, I think, will surely ruin the whole Choctaw business if they are allowed to continue to manage the business as they have done with your approbation.

The commission given you by me was 'to protect and defend all and every right and interest of the Choctaws under treaty stipulations.' But from the extract of the bill I have seen that they were all given away or sacrificed contrary to instruction.

Fearing this result, I wrote you on the 9th inst. informing you that Hon. Mr. Latrobe is the acknowledged attorney of the Choctaw nation, and deprecating also the employment of any separate attorney to institute a suit against the Gov't of the United States, 'the net-proceed claim' as a separate claim from that of Mr. Latrobe.

But the executor of Mr. J. T. Cochrane's estate should only act with Mr. Latrobe in prosecuting the claims. Every interest and right of the Choctaw people, including the 'net-proceed' claim, were all secured by the treaty of 1866, with the assistance and counsel of Mr. Latrobe, and he must continue to manage the whole business until they are consum-ated, as contemplated by contract already referred to (death and lawful reasons excepted).

Unless that is done, and should you continue to press the net-proceed claim as separate business from all those secured by the treaty of 1866, to the injury of the nation pecuniarily, I shall be obliged to revoke your commission, and request and authorize the council to declare the old power of attorney and former contract with Mr. Cochrane null and void.

This does not by any means *to* deprive you or other parties interested in the business including Mr. Cochrane's estate, but depriving you only of the right of employing new attorneys, so that

the whole Choctaw nation's business would be more secure, which, in my opinion, is very essential.

Most respectfully, your ob't serv't,

ALLEN WRIGHT,
P. C., C. N."

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Q. I now show you, Mr. Latrobe, a letter dated Choctaw nation, executive office, November 8th, 1869, which is addressed to you, and apparently signed Allen Wright, principal chief, Choctaw nation, etc. Can you say in whose handwriting that is?

A. That is Allen Wright's handwriting.

Q. Signature and all?

A. It is his handwriting altogether throughout. I am familiar with his handwriting.

53 Col. TOTTEN: I offer that letter in evidence, and ask that the same may be marked Exhibit No. Two. A copy of the letter may be inserted in the record, and the original will be produced at the hearing.

The following is a true copy of the above letter:

CHOCTAW NATION, EXECUTIVE OFFICE, *Nov. 8th*, 1869.

Hon. J. H. B. Latrobe.

DEAR SIR: I herewith enclose a copy of "An act to repeal an act entitled An act to authorize the national attorney to attend to the claims set against the nation under the 49th and 50th articles of the treaty of April 28th, 1866, and for other purposes." * * * "And also a repeal of the 2nd section of a joint resolution approved November 18th, 1867, making it the duty of the national attorney to audit and allow certain claims," etc., embodied in the same act, which you will please file the same with the Commissioner of Indian Affairs.

The repeal of this act leaves no one but yourself authorized to appear before the department with which the Choctaw nation might have business, as its sole agent.

You will, therefore, urge the business of this nation and bring it to an early settlement, more especially of the 'back annuity claim."

Very respectfully, your ob't serv't,

ALLEN WRIGHT,
P. C., C. N.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Q. I have another letter, Mr. Latrobe, which I show you, dated Boddy Depot, Choctaw nation, April 3, 1867, addressed to you, which seems to be signed Allen Wright. See if that is his handwriting, also.

A. Yes, sir; that is his handwriting.

Col. TOTTEN: I offer that letter in evidence, and ask that the same may be marked Exhibit No. Three. A copy of the letter may be inserted in the record, and the original will be produced at the hearing.

The following is a true copy of the above letter:

BOGGY DEPOT, C. N., *April* 3, 1867.

Hon. J. H. B. Latrobe.

MY DEAR FRIEND: After sending my last communication to you, last week, Judge Garland, one of the old members of Choctaw delegation, came to my house and was very glad to see him, because he was well acquainted with Col. Pitchlynn and J. Folsom's movements in regard to net-proceed claim. I had a very pleasant interview with him. And at the same time I stated all the facts of your copartnership with Mr. Cochrane in prosecuting the Choctaw business, including the "net-proceed claim." I think that he was satisfied with what I stated to him, especially in regard to our endorsing the old contract with Mr. Cochrane for you and Gen. Cooper to act together with him. However, no definite understanding or promise was made to me up to the time I left home
54 for Armstrong academy, to see the national attorney while he is attending the Supreme Court on some other national matters.

On my way back I met him on the road, and he voluntarily recalled of our former conversation, and said, "I am satisfied that there must have been an agreement existing between Mr. Latrobe (yourself) and Mr. Cochrane in regard to prosecuting the Choctaw claims. And when you write say to him that I am going on to Washington next winter and will, so far as I am able, sustain the contract or agreement as entered into between Mr. Latrobe, Cochrane," etc. He said he will not go this season, inasmuch as it is too late for anything to be done during the remainder of the session of Congress.

I hope to hear that you have come to better understanding with the old delegation and their attorneys, etc.

Most respectfully, your ob't serv't,

ALLEN WRIGHT.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Q. I now show you a communication addressed to General E. S. Parker, Commissioner of Indian Affairs, apparently signed Allen Wright, dated Choctaw nation, executive office, August 18th, 1869. I ask you in whose handwriting that paper is.

A. Well, sir, that is Allen Wright's, and this has been in my possession, and I find in my own writing this endorsement, "about authority to act for Choctaws," Dr. A. Cooper. That is on the back of it. That is not Mr. Wright's handwriting, but the letter is.

Col. TOTTEN: I offer that letter in evidence, and ask that the same may be marked Exhibit No. Four. A copy of the letter may

be inserted in the record, and the original will be produced at the hearing.

The following is a true copy of the letter:

CHOCTAW NATION, EXECUTIVE OFFICE, *Aug. 18th*, 1869.

SIR: According to an agreement entered into between the Hon. J. H. B. Latrobe, of Baltimore, Md., and the Choctaw delegation of 1866, that said J. H. B. Latrobe was engaged and employed to defend certain Choctaw interests, and that Gen. D. H. Cooper was to aid Hon. J. H. B. Latrobe in the business, and that said D. H. Cooper having lately formed a partnership with Charles E. Mix, Esq., as claim agents, therefore the said firm of Chas. E. Mix and D. H. Cooper is to be equally respected with said J. H. B. Latrobe before the Interior or any of its branch departments on all Choctaw interests referred to as their legal advisers.

Respectfully, your ob't serv't,

ALLEN WRIGHT,
P. C., C. N.

Gen. E. S. Parker, Com. Ind. Affairs.

55 A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Q. I next show you a letter—a paper which seems to be signed by Allen Wright, with a seal, and John Page and Alfred Wade—and I ask if you know in whose handwriting that is—all the signatures?

A. Well, the signature of Allen Wright, to the best of my knowledge and belief, is the signature of Allen Wright. The handwriting of the body of the paper I am not sure about.

Q. How is it about the signature of John Page?

A. Well, about John Page I could not swear, nor could I swear to the signature of Alfred Wade; but Wright's signature I know. The body of the letter I do not recognize as Wright's.

Col. TOTTEN: I offer that letter in evidence, and ask that the same may be marked Exhibit Five. A copy of the letter may be inserted in the record, and the original will be produced at the hearing.

The following is a true copy of the above letter:

INDIAN TERRITORY, CHOCTAW NATION,
EXECUTIVE OFFICE, CHATALA, TAMAHA, *Nov. 2nd*, '70.

Be it known, and it is hereby so certified by myself, William Bryant, principal chief of the Choctaw nation, that Fellen Wolli, whose signature appears on the within affidavit of Allen Wright, John Page, and Alfred Wade, was, at the time of certifying the same, and is now, judge of the county court of Blue county, Choctaw nation, duly commissioned according to law, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and caused

the great seal of the Choctaw nation to be affixed the day and date above written.

WILLIAM BRYANT,
P. C., C. N.

Tests: EDWARD DWIGHT, [SEAL.]
National Secretary.

We, the undersigned, delegates of 1865–'6, who participated in the negotiation of the treaty between the United States and the Choctaw and Chickasaw nations of July 10th, 1866, do hereby certify and declare, in conformity with the instructions of the Choctaw councils, a meeting of the Choctaw and Chickasaw delegates was held in the city of Washington, and *ar* a resolution passed that the Hon. J. H. B. Latrobe, of Baltimore, Md., should be employed as counsel for both nations to aid and assist them in conducting their negotiations with the United States Government, each delegation to make their own contract with said J. H. B. Latrobe. That subsequently a contract was made and finally reduced to writing and duly executed. We further certify that inasmuch as the late John T. Cochrane had a contract with the Choctaw nation for the prose-
56 cution of the Choctaw "net-proceeds claim," so called, the undersigned, in conjunction with Jas. Riley, now deceased, who was one of the Choctaw delegation, ratified, reaffirmed, and approved said contract, with the understanding that the Hon. J. H. B. Latrobe and the said John T. Cochrane, now deceased, were to be associated together in all the Choctaw benefits, and they should employ D. H. Cooper, to assist them, all them equally participating in whatever should be made under the Cochrane contract and the Latrobe contract.

Witness our hand this second day of November, A. D. one thousand eight hundred and seventy, at Chatala, Tahama, Indian Territory.

ALLEN WRIGHT. [SEAL.]
JOHN PAGE.
ALFRED WADE.

Subscribed and sworn to before me, judge of the county court of Blue county, Choctaws nations, this second day of November, A. D. 1870.

Witness my hand and seal the day and year above written.

FHLEN WOLLI, [SEAL.]
Judge of the County Court of Blue County, C. N.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Q. In the discharge of your duties as attorney for, or counsel for, the Choctaw nation, what was the principal character of your business, for instance, in reference to the Interior Department? I want to find out, Mr. Latrobe, whether you prepared a brief, or made any argument in writing, or orally, or both.

A. Yes, sir; I did what I did for them in writing. I see here—Mr. Fendall has shown me them, I think he may have got them from me—arguments of mine, two printed books, pamphlets, which I prepared, and I prepared other papers, and my relations were of a lawyer who had clients who required his services from time to time, and during the time that they were in professional relations together, I answered questions without keeping a memorandum of the times or occasions, but know that they had relation to the net-proceeds claim, which was just as familiar as my own name to me.

Q. Were you brought over to Washington at all in the discharge of your duties, after the consum-ation of the treaty?

A. Well, with regard to the net proceeds, now, if you are referring to Mr. Cochrane's agreement with me, I cannot enumerate how often when I was in Washington, but I had constant conversations—frequently—with General Cooper who was with us in this matter. I had also a heavy correspondence. In fact, my correspondence in this connection was very voluminous.

Q. Did you ever have occasion to attend upon the committees of Congress in relation to the business?

A. No, sir; I attended upon no committee of Congress. I never went. My business was advising with clients—advisory entirely.

57 I have never—if you mean to come to the point at once—I have never lobbied members. No fee that you could have given me could have paid me for dancing attendance upon Congress as a lobbyist. If anything of that kind was done it was done by Cooper or Mix, or others.

Q. Were you ever called upon to make a professional examination of the treaties and give an opinion touching the construction of them; and, if you were, state about how often?

A. Well, sir, the commencement of my connection with these people was the result of a loose opinion expressed that the treaties could not be abrogated in the way that Mr. Cooley said that they were abrogated. I found that they were not abrogated, and I investigated that matter very thoroughly, just as a lawyer would do, and when I came to the conclusion, which was ultimately adopted as the law of the case, my examination ceased so far as that question was concerned. Then, with regard to the subsequent net-proceeds claim, it was the same. I went over the whole thing from beginning to end. Everything was done—all the proceedings that I could lay my hands on, and a portion of my work is in the pamphlets to which I have referred. All those papers were prepared with a great deal of labor, and I went through the whole of them from the beginning to the end.

Q. After the examination of the whole question, and the history of it—the history of the claim and the whole question?

A. All this is shown in my printed opinion, which is here, and has been published. I do know, and I say most emphatically that the net-proceeds claim is in the correspondence with Gen'l Cooper, and it was verbally and in writing. In fact, I knew the net-proceeds claim from the Dancing Rabbit creek treaty down. But now I have forgotten it, every bit of it.

Q. Mr. Latrobe, I wish you would look over this document which I now show you, and it will probably refresh your memory as to what you did.

WITNESS, reading: "Statement of the services rendered by John H. B. Latrobe, in connection with the Choctaw claim, for what is known as the net proceeds."

Mr. TOTTEN: We might transfer those documents to this record, but I do not think it would be proper to do so, but I would like to have you state, after having refreshed your memory, or as you go along, what you did generally?

WITNESS: Let me read this. (Reading from page 77 to page 79 of the pamphlet exhibit:)

"After the close of the late civil war the delegates to the Choctaw nation, consisting of Allen Wright, John Page, Alfred Wade, and James Riley, then on their way to Washington, were introduced to me in Baltimore by General Douglass H. Cooper, formerly Indian agent, and I was employed by them as counsel in all matters affecting their interest before the Government, and was informed that at the same time *that* the Choctaw nation had actually signed preliminary treaty admitting that the nation had made itself liable to a forfeiture of all rights of every kind, character, and description which had been promised and guaranteed by the United States.

58 The first service that I rendered was to investigate the pretention of the United States commissioners, who had met the delegates at Fort Smith in September, 1865, to this effect, and having satisfied myself that although the President had been authorized by the act of 1862 to abrogate by proclamation all treaties with the nations that had joined in the confederacy, yet that having failed to do so these treaties still remained in force, and I proceeded to negotiate the treaty of 1866, which was prepared by myself with Mr. Harlan, the Secretary of the Interior, and D. H. Cooley, Commissioner of Indian Affairs, and every word of which was in my own handwriting. It is under the 10th article of this treaty, which 'reaffirmed all obligations of the United States arising from the treaties, stipulations, or acts of legislation, and the 45th article which reinstated the Indians in all their rights, privileges, and immunities,' that the claim of 'net proceeds' has been since prosecuted.

In this work it became necessary to pass the greater part of the winter of 1865 and 1866 in rooms that I had in the Metropolitan hotel, in Washington, in constant conference with the delegates, as well as with General Cooper and Mr. Cochrane and the Commissioner of Indian Affairs. Even after the treaty had been negotiated, and the Senate had ratified it, I had to prepare arguments and write letters until my correspondence alone in this connection more than double all the other correspondence of an active profession.

While I was engaged in negotiating this treaty, Mr. John T. Cochrane with whom the Choctaws had 'in 1855 made a contract for the prosecution of the claim for net proceeds,' recognized the important effect the treaty would have on the net-proceeds claim,

and in consideration of the benefit people derived from the work I had done, and believed that my service would prove useful to him, agreed with me that I should participate with him in the work, and in the compensation of the contract, and, on the other hand, I made a similar agreement with him as to my contract. This agreement was not reduced to writing, but it was well known to Alfred Wade, Allen Wright, James Riley, and John Page, the delegates who, on June 2nd, 1866, at Washington, reaffimed the Cochrane contract. The affidavit of Wright, Page, and Wade is hereto attached showing that they knew and approved of this agreement. In October, 1866, Mr. Cochrane died, and without and notice to me, Mr. McPherson, his executor, on the 8th of November, 1866, made a contract with Jeremiah S. Black, by which the latter was to receive the whole compensation which the contract with the Choctaws gave to his testator; but he was to pay out of the 30 per cent. all demands, justly due and payable out of the compensation, and he was also to pay to said McPherson, as executor, such sum as they should agree upon. By the agreement between Cochrane and myself each was to receive one-half of the compensation; but when I asked Mr. McPherson to reduce the contract to writing he said he had no information whatever on the subject. Ultimately he and I agreed that I should receive the sum of $75,000 from which I was to pay Douglas H. Cooper and Chalres E. Mix, whom I employed to assist me.

59 From Mr. McPherson's testimony before the Committee on Indian Affairs of the House (42nd Congress, 3rd session, Report No. 98, page 476), it appears that in addition to the cash paid by J. S. Black, in November, 1866, he was also to pay to McPherson $75,000.00. Mr. Black acquiesced in the compromise between myself and Mr. McPherson, and agreed to contribute $50,000 towards the $75,000 coming to me, and Mr. McPherson's executor was to make up the remainder.

As late as October 30th, 1873, the Cochrane contract was reaffirmed by the council of the nation.

So far as the arrangement above mentioned related to my contract with the Choctaws, it has been fully carried out. All the compensation I have ever received from them is $16,000, and to Mr. Cochrane was paid the same amount. While under my agreement with the Choctaws, I was entitled to receive $100,000.00; as a matter of fact $16,000 was all I ever did receive. The $100,000 was paid to Mr. Cochrane, who alone had charge of the pecuniary part of the business, and who made distribution of the sum paid to him as follows: To the delegates, $50,000; to me, Douglas H. Cooper, and himself, $16,000 each.

From 1866 until some time in the year 1879, when D. H. Cooper died, I was continuously engaged as council for the Choctaw nation in their efforts to secure the 'net-proceeds' claim. Mr. Cooper and Mr. Mix would stay in Washington, while I had other law business and remained in Baltimore. My visits to Washington on this business were too numerous to mention; and Mix and Cooper fre-

quently came here to consult me. The correspondence between us would fill volumns.

Briefly stated I was the legal advisor of these two gentlemen who constantly consulted me. Cooper having spent all his own money in this business, was compelled to fall back on me for the support of himself and family, and I advanced to him over $4,000.

Thomas A. Scott, with whom I communicated on the subject, also advanced him $1,000. I paid to John D. McPherson, executor of Cochrane, at one time $1,000 for expenses. Practically I received no aid in this matter, except from Cooper and Mix; if any one else was acting for the Choctaws I was not aware of it. I received no aid from Jeremiah Black to whom the Cochrane contract had been assigned.

I accompany this statement with some of the documents prepared by me, which still remain in my possession, including the memorial of the nation to Congress in regard to the claim, and an argument in reply to the letter of the Secretary of the Treasury in this connection, to show the character of the services that I rendered, and I may state generally that communications signed by Col. Pitchlynn when representing the nation in Washington were prepared by me."

A true copy.

Test: MASON N. RICHARDSON, *Examiner.*

(After reading.)

60 WITNESS: That is in writing, what I have already substantiated, yes—that is, in 1887. Well, sir, that is right, except as I say here and except which my contract, I suppose exactly corresponded—that part referring to how Cooper and Mix came in. My understanding of that was that Cooper and I and Cochrane were to take the whole.

Q. That paper which you have just read, Mr. Latrobe, seems to have been sworn to by you in 1887?

A. Yes, sir.

Q. After having read it over, and refreshed your recollection, what do you say about it now; is it correct?

A. Well, sir, there are certain things there which are said upon belief. I had no personal knowledge of what took place between Black and Tom Scott, but the facts that are stated in my own knowledge I still adhere to. Will you allow me to look at that one moment again? (After looking over the paper.) There are several things here which are stated upon belief, such as that the Cochrane contract was affimed by the counsel of the nations; that was my belief that it was [d]one. I was probably supplied with authentic proof of that fact.

Q. I find here a communication addressed by you to the principal chief, council, and people of the Choctaw nation, dated May 26th, 1871. Can you state the occasion of that paper being written?

A. Not unless you let me look at the paper, sir.

Q. I only wanted you to state the fact. I only wanted to get

your statement as to the fact that you performed that labor embodied in that paper.

A. Well, do you know what is the date of this letter?

Q. Well, it is May 26, 1871.

WITNESS (reading letter):

"To the principal chief, council, and people of the Choctaw nation:

Regarding myself as agent of the nation in Washington since the treaty of 1866, which, you are aware, as negotiated by me, with the assistance of the delegation of that year, I have from time to time communicated with the Choctaw authorities. My authority from the delegates was approved when given by the then principal chief of the nation, Col. Peter P. Pitchlynn, and is on file in the Indian department. I now again address you.

I need not tell you that from the time the delegates of 1866 left Washington to the present day, the heaviest claim of the nation upon the United States has been for the 'net proceeds' of their land east of the Mississippi. To this I was advised that it was your wish that all others should be subordinate. Much had been written and said about it that was forgotten. What was said about it when it was on one occasion mentioned in the House of Representatives showed that it was misunderstood; and harsh and unjust things were said of your people which needed contradiction. I accordingly prepared a memorial taking up the subject from the beginning, and presenting a history of it that was absolutely true. This was ordered to be printed by the late Congress, and whenever the 'net-proceeds' claim is successful, as sooner or later it must be, it will be on the merits as I have presented them.

61 When the 'net-proceeds claim' came before the Senate at the session of Congress which terminated on the 4 March, 1871, there was an attempt made to attach to it the claim of the nation for the bonds of the United States for $250,000 directed to be issued by the act of March 2nd, 1861, and subsequently confiscated by the act of 1865, but to which your right was restored by the 10th section of the treaty of 1866, which had been suggested by me to cover this very claim. I think this attempt was injudicious. I am not prepared to say that the 'net-proceeds' claim would have succeeded had this load not been put upon me; but it effectually destroyed what chance it had. Still, ill advised as it was, I did all in my power to sustain it.

And here I want you to understand what I mean when I speak of efforts on my part in your behalf. When people apply to those having business before Congress, saying that they have this, that, and the other influence, they deceive themselves, or, in nine cases out of ten, they intend to deceive you. This is the way of getting your business, but it is not the way to complete it. Except in rare instances, when a claim comes before Congress or the departments, it is well looked into, and it stands or falls upon its merits. It is for this reason that I have confidence in the 'net-proceeds' claim. It is a just claim. What outsiders, agents, lawyers, can do in Wash-

ington is to present and explain matters to committees and to officials, and if they have friends in Congress, who will listen to them for friendship sake, so much the sooner will a proper understanding of these matters be brought about, and if right is on the side of the client or the principal, so much the sooner will Congress be prepared to do justice. When I shall speak, therefore, of efforts that I and my friends who are disposed to oblige me, have made in your business, you will understand that I do not pretend to control members of Congress, but to explain to them why it is they should not hesitate to do you justice. The memorial I have already spoken of is an example of wh[a]t I mean. It was published by Congress because of the explanations made to those who had opportunity to ask for permission to that effect.

In this memorial I spoke of an opinion that the Attorney General had given as to the effect of the tenth article of the treaty of 1856, upon the act of 1865, which had confiscated the bonds ordered to be issued by the act of 1861. He took the view that I supposed any good lawyer would take, when as already said, I suggested the article when negotiating the treaty. I signed this memorial myself. In the first place, I was the writer of it, and had written it as your agent In the next place, I had no reason to believe that Col. Pitchlyn [n] would co-operate with me in thus obeying your wishes and placing the 'net-proceeds' claim before Congress ahead of the bond claim. The Secretary of the Treasury would not take the responsibility of issuing the bonds on the opinion of the Attorney General, but referred the matter to Congress. The Senate assented virtually to his issuing them. The House held back. I could hear of no movement on the part of those who had been active in procuring the Attorney General's opinion and the Senate's ac-
62 tion, in pushing the Senate's resolution in the House. I was afraid that there might be some motive for holding it back until the expiration of the session, and exerted myself to have it brought forward. In this, I have reason to believe I was successful. At any rate, just as the session was coming to its end, a committee of conference between the Senate and the House of Representatives, without expressing an opinion as to the Attorney General's views, included the $250,000 of bonds in the general Indian appropriation bill, to be paid out as directed by the act of March 2, 1861.

As you are probably aware it was determined by Congress at the session of 1871, recently adjourned, to take up no general business; not even the standing committees of the House of Representatives were appointed. Nothing, therefore, could be done in regard to the 'net-proceeds' claim, further than to procure the introduction and reference again, for the use of the present Congress, of the memorial I had, as already said, prepared for the preceding one so as to have the subject in readiness when Congress meets again at the close of the year in 1871.

I can readily understand the feeling in the nation that this procrastination of justice must give rise to; and how natural it is that the delay should be imputed to the inefficiency of your agents. There are some of you who have been to Washington, and must

have seen how utterly impotent members of the Senate and House of Representatives themselves, with every opportunity, often are to carry measures for their constituents. With outsiders the case is still worse; and it is made next to desperate when parties having a common interest act independently of each other, as was the case when the bond matter was tacked on unadvisedly to the 'net-proceeds' claim in the Senate, and when the judiciary committee had authorized an amendment to the Indian appropriation bill, giving $1,832,550.85 in discharge of the latter. I would feel that there was more reason for dissatisfaction could it be shown that greater success had been secured by parties representing similar claims than had attended my efforts.

Those who had been thus active before the Senate in the bonds matter without other result than destroying the chances of the 'net-proceeds' claim might otherwise have had, seem to have considered that the whole interests of the Choctaw nation were in their hands, and had I desired to retire from the agency, as responsible as it was, unremunerative, I might have taken the opportunity of doing so that was thus apparently afforded me. But you had not revoked my authority; and matters came to my knowledge which made it necessary, I thought, that some one here should look after your interests. The parties thus referred to had been induced, by the supposed influence, of some outsiders, to agree to give them for their services the entire interest that it was then expected would be paid on the $250,000 of the bonds of 1861. In other words, the agreement was to pay them about $180,000, including, with the interest, the premium upon United States bonds and the premium upon gold. It was understood, too, that to carry out the ar-
63 rangement referred to, the bonds, when issued, were to be received by one who, I was advised, was already largely indebted to the nation on past transactions.

It now seemed to me that my duty was plain. I was satisfied a great wrong would be done to the nation if I did not interfere. I had no purpose to prevent the Choctaws from benefiting by the act of Congress. I had no right to receive the bonds myself. General Pitchlynn I understood was a party to the agreement that I feared would be so injurious, and would not, as a matter of course, protest against its being carried out. My authority from the nation had, however, not been revoked, to my knowledge, and addressing a letter to the Secretary of the Treasury, advising him of my agency, I urged that no delivery of the bonds should be made without my knowledge. Calling afterwards on the Secretary, I became impressed with the idea that he was disposed to recognize the delegation then in Washington as authorized to receive the bonds. He evidently desired, though, to do full justice to the nation. This lead me to prepare a review of the acts of your legislature in this connection, showing the utter want of authority in the delegation. I withheld this for a season, in the hope of an amicable settlement and agreement among all parties in Washington, consistent with the interests of the nation, would obviate the scandal of an open dispute among its friends. This, however, was impossible, and my

review was presented. The Solicitor of the Treasury coincided with me fully. The question then arose as to whom the bonds were to be intrusted for transmission to the nation, whether to the parties to the above-mentioned agreement, or to an agent of the Treasury, or whether they should be retained by the department until the nation should send for them. Here I again felt myself called upon to intervene and protest against the bonds being delivered to the delegates. If they were to be registered bonds, it was true that they could not transfer them; but the mere possession of them would have enabled the holders to exact terms from the nation that would not otherwise be granted to them.

My last communication to the Treasury Department has been to ask them, first, that I may be advised of the form that the national authorities must adopt to insure the receipt of the bonds. Second, to urge their transmission by a Treasury official. Third, to ask that the question of interest on the bonds may be referred to the Attorney General. I had already filed a full argument on this point, in reply to the Solicitor of the Treasury, who is of the opinion that the bonds carry no interest prior to their issue. I send herewith the reply of the Secretary to this communication of inquiry. Copies of my other communications are thereto appended.

In this letter I have used the first person for convenience sake; but I want it to be most distinctly understood that no merit that I can claim is greater than that which is due to the firm of Charles E. Mix and Company, and especially to General Douglas H. Cooper. Mr. Mix and General Cooper are eminently fitted for this especial business. They know more of Indian affairs than any other firm or individual in Washington; and this is understood and appre-
ciated as well outside of as within the departments. They
64 have had unequalled opportunities of acquiring knowledge,
and their steady perseverance cannot be excelled. There can be no better evidence of their efficiency than the fact that it is, I believe, due to their efforts mainly that matters have been so presented to the authorities in Washington as to defeat the arrangement which would, as already said, have so greatly prejudiced you.

No one who performs his duty can expect to escape hard words and censure. Nor have I been an exception; I will readily admit that it has mortified me to hear it stated that the principal chief had revoked my authority. I did not believe anything of the kind, nor do I believe it now. Had he done so he would have notified me in common courtesy.

I have the abiding confidence in your doing justice by those who served you. I have never doubted the nation's faith. My object has been to protect you from wrong, as well as to urge your claims, and to place your property in your own keeping, to be dealt with as you see fit.

I have the honor to be, your obedient servant,

(Signed) JOHN H. B. LATROBE,
Of Counsel for the Choctaws.

Baltimore, May 29th, 1871."

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

WITNESS (after having read the letter): I believe that at the time everything was true that I stated in it.

Q. You prepared that letter in the discharge of your duties?

A. Yes, sir; I prepared that letter. It seems to have been a question as to the policy of certain management of the claim.

Q. I find another long letter printed here.

A. From whom?

Q. Addressed by you to the Secretary of the Treasury of the United States.

A. Well——

Q. Can you state briefly why that was done: I only want to show that you performed this service for the nation.

WITNESS (reading letter): April 11th, 1871.

To the honorable the Secretary of the Treasury of the United States.

SIR: After addressing to you the letter immediately following my brief interview of the 21st instant, and in which I dwell upon the importance of insuring the receipt by the Choctaws of the bonds then mentioned by sending them to the nation by a special agent, I had an opportunity of referring to the volume of Choctaw laws published in 1869. In my letter above referred to, I spoke of my inability, without these laws before me, to judge of the pretentions of Messrs. Pitchlynn and Folsom to receive the bonds in question,
but stated my impression that their authority was confined
65 to the prosecution of the "net-proceeds" claim, so called, "a matter wholly distinct from that now on hand." An examination of the volume of the laws satisfies me that I was altogether right in the view that I then took; and I take the liberty at this time of presenting to you a brief of all the Choctaw legislation that the volume contains in this regard, with the purpose of facilitating, as far as may be in my power, the examination that I am sure the department will have made prior to it[s] final conclusion touching the disposition of the bonds.

"Brief as to the proper authorities of the Choctaw nation or tribe authorized to make requisition for certain bonds of the United States, deliverable under the provisions of the acts of Congress of March 3, 1871, and March 2, 1861."

The district chiefs, under the old constitution of the Choctaw nation, contracted with Peter P. Pitchlynn*n*, Israel Folsom, Samuel Garland, and Dickson W. Lewis (of these original delegates Dickson W. Lewis, Israel Folsom, and Samuel Garland are now deceased, and the places of Lewis and Israel Folsom are filled by Peter Folsom and Doctor T. J. Bond; Garland's place is not yet filled), to prosecute the Choctaw claim on the United States, said delegation having been previously, by resolutions of the Choctaw council of November 9, 1853, empowered to visit Washington "to represent and to institute on behalf of the Choctaw people, a claim on the United States for pay and remuneration for the country which they ceded to the

United States Government east of the Mississippi." The claim here referred to has since become known as the "net-proceeds claim."

Under this authorization the delegates finally contract with the late John T. Cochrane, as their agent in the premises, and after some delay the treaty of June 22, 1885, was concluded, the ratification of which is at page 144 of the volume of laws.

Then follows, at page 145, the act of the Choctaw council "directing disposition of funds due Choctaws under various articles of the treaty of 1855," approved July 25th, 1856.

That the previous legislation of the Choctaw council was not intended to authorize the delegation of Pitchlynn and others to receive and receipt for the Choctaw moneys payable under the treaty they had negotiated, is made most apparent by the provisions of the act of July 25, 1856.

The person authorized to receive and receipt for the moneys of the nation is the national treasury, whose duties are defined in the act approved October 26, 1869 (see pp. 236–243, Choctaw Laws), an act in force when the law of Congress of March 2nd, 1861, was passed authorizing the issue of the bonds in question, and which has not since been repealed. This being the general law, any departure from it must be authorized by special legislation; and there is no such legislation on the statute book of the Choctaws in this connection.

That it is the treasurer who is the person to receive the bonds in question is fairly inferable from the second section of the last-named act, which prescribes the penalty of his bond in which he is required to render a just and true account to the general council of the Choctaw nation, when by them thereto required, of all moneys, securities, and other property of said nation, which shall come into his hands or be committed to his charge, etc.; and by the fourth section he is required to open certain books of account, in which he shall enter the amount of all moneys, securities, and other property in the treasury, which may be at any time received by him, etc. The fifth section of the same act declares that it shall not be lawful for the national treasurer to pay or receive any money on account of the nation, but on the warrant or certificate of the auditor. (See Choctaw laws, also, prescribing duties of national auditor.)

Assuming that "moneys" here mentioned include bonds, it would seem clear that the treasurer and the auditor of the Choctaw nation are "the proper authorities," within the meaning of the acts of Congress of 1861 and 1871, to whom the $250,000 of the United States bonds now in question shall be issued in the absence of any special legislation of the Choctaw council ordering otherwise.

In the letter of Messrs. Pitchlynn and Folsom of the 21st instant, reference is made to the act of the Choctaw council, of November 18th, 1867, as authorizing the issue to them of these bonds.

Turning to this act, at page 470 of the Choctaw volume, we find that the Pitchlynn delegation are notified to proceed to Washington "for the express purpose of bringing the subject-matter of these resolutions to the notice of Congress, and to respectfully ask an early

appropriation to be made to carry into effect the amount due this nation, as stated in the preamble to the resolution," the preamble having recited the circumstances attending the "net-proceeds claim."

There is nothing here looking to the delivery of the *delivery of the* bonds to the delegates; the second section is altogether inconsistent with the idea of any such delivery being intended, inasmuch as it is provided that, in the event of any appropriation by Congress, the delegates are to report the fact to the national attorney, who shall proceed to investigate the claims of such delegates, as well as the amount that may be due to their attorney, for fees under a certain contract said to have been made with John T. Cochrane dated February 13th, 1855, and shall report the amount due to the delegates and attorneys to the principal chief of his nation, who shall convene the council, should he deem it necessary, in order to provide payment due under the contract aforesaid, as well as to carry into effect the twelfth article of the treaty of 1855, it being understood that no money shall be paid on said contract or any other contracts which had not been duly authorized and proved by the council. (See p. 472, volume of Choctaw laws.)

Unquestionably there is no authority in this act under which Messrs. Pitchlynn and Folsom can demand the bonds; on the contrary, the only authority given them is to ask for an appropriation, etc. An- the — of the same session of 1867, p. 453, illustrates the jealsousy of *act* Choctaws in regard to any interference with their funds; the Commissioner of Indian Affairs being notified to make no payments of Choctaw*s* moneys except to carry out treaty stipulations, or authorized by the general council for national purposes, duly certified by the national secretary.

67 I have been informed that the second section of the act of November 18, 1867, has since been repealed. Still the enactment of this section originally illustrates the meaning of the council at the time of its adoption, and the first section standing alone is a clear negation of the right of Messrs. Pitchlynn and Folsom to demand the bonds.

There is an act of the Choctaw council, which is not inserted in the volume of laws here referred to, and under which the cash payment of the $500,000 directed to be paid the Choctaws on account of the "net-proceeds" claim seem to have been made, that is probably relied on now. This act is dated February 6th, 1861, and is on file in the Treasury Department. The first section provides that Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, regular delegates of the nation duly accredited to the Government of the United States, be, and are hereby, authorised, empowered, and directed to confer with the proper authorities of the Government of the United States as soon as practicable, in regard to the safety of the funds of this nation held in trust by said Government, known as the "trust fund," for the "youth fund" and "orphans' fund" "or other funds," and if deemed necessary for the preservation of said fund by said delegation they shall withdraw all of the said funds

or the bonds in which they are invested from the hands of said Government, as provided February 6, 1861.

Now in the first place it is evident that this act of the Choctaw council could have no reference to the money or bonds authorized to be paid and issued by the act of Congress, passed nearly a month later, of March 2nd, 1861. It is true that the money part of the appropriation was paid to the delegates.

But the construction that authorized this would seem to have been a strained one, and certainly no such precedent has been established as could be considered binding now. In the next place, the authority, whatever it was, was given in reference to a contingency that no longer is in the range of probability. The country was on the brink of rebellion; geographically the Choctaws were likely to be involved in it, and they might have thought that they had some reason to believe that their trust and other moneys were in peril, and could but be saved by withdrawing them. An idle fancy, that we now only wonder at. To claim the bonds, then, under the act of February 6th, 1861, would seem, therefore, to be simply absurd.

Turning, however, to the act of Congress of March 2, 1861, we find a marked distinction between the money and the bonds in question: "Two hundred and fifty thousand dollars of which (the $500,000 to be paid on account) shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe on their requisition bonds of the United States authorized by law at the present session of Congress." Provided, &c., the mode in which the money was to be paid, the parties to whom it was to be paid, were matters which were left, it would seem, to the discretion of the Secretary; no requisition was required from the proper authorit[i]es to justify it.

68 But it was different as regards the bonds; for the issue of these a requisition was essential from the proper authorities. And who were the proper authorities? Looking to the Choctaw law of 1860, defining the duties of the treasurer and the auditor, they would seem to have been the proper authorities, or, if the treasurer had chosen to demand it, the action of the council might have been required; certainly delegates, whose authority, as we have seen, was expressly confined to bringing the net proceeds to the notice of Congress, would not be regarded as "the proper authorities," nor are the suggestions made now for the first time.

It will be seen, by reference to the records of the Treasury Department and the Indian Department, that Mr. Chase, then Secretary of the Treasury, having called upon Mr. Caleb Smith, then Secretary of the Interior, in April, 1861, for his opinion as to the authority of the Choctaw delegates, Pitchlynn and other[s], to make a requisition for the bonds, the latter replied substantially that he did not consider their authority sufficient to authorize the delivery, and that something more specific was necessary to warrant it. Mr. Smith's letter is dated April 20th, 1861, and is subsequent to the payment of the $250,000 in money.

That subsequent legislation of the Choctaws furnished no more

specific authority has, it is thought, been shown conclusively in the present brief, and there is no reason for regarding the objection of Mr. Smith, corroborated by the non-action of Mr. Chase, as having been removed by mere lapse of time.

In the above brief I have confined myself to matters on the face of the Choctaw legislation in connection with the acts of Congress, for the purpose of showing that Messrs. Pitchlynn and *Golson* are not authorized to demand and receipt for the bonds in question. There are other views which will no doubt occur to the law officers of the Treasury that might be urged in this connection. In saying what I have done, in urging upon the Secretary to withhold the bonds until he has more specific authority for delivering them from "the proper authorities" of the Choctaws, or to send them by special agents to the nation, I am acting under the belief that the authority which I had when negotiating the treaty of 1866, and which was subsequently continued by the then delegates of the nation, and by Col. Pitchlynn himself, has never been revoked.

I have understood that affidavits have been filed charging me with having received $100,000 for fees from the Choctaws, and denying my authority to represent them. I have unquestionably, year after year, been occupied in their behalf, and it is only within the last few months that I have prepared with much care and labor an exhaustive representation of the "net-proceeds claim," which I signed as their council, which has been recited by the House of Representatives, and which has not been disavowed as wanting authority; and among the papers on file in this case is an extract from a letter of the ex-chief, Mr. Allen Wright, stating that his colleagues of the deputation of 1866 and himself regard me as having this very bond matter in my charge. If I have been disavowed by any competent authority, I have yet to learn
69 it. Those who know me will readily believe that neither for money nor for mischief am I apt to meddle with what does not concern me.

Touching the compensation paid me by the Choctaws, I have no hesitation in saying that it was $16,000, neither more nor less. Those who know the services I rendered, the responsibility that rested on me, or the importance of the occasion, will not regard the fee as an unreasonable one. Whether reasonable or not, it has nothing to do with the claim of Messrs. Pitchlynn and Folsom to receive the bonds, and I have only to regret that in supporting their pretentions they have gone out of their way as regards myself. My connection with the "net-proceeds claim" grows out of the fact that Mr. J. T. Cochrane, already referred to, associated me with him in the prosecution of it in his lifetime. My compensation, as agreed upon with his executors, is a specific sum dependent on success, and small indeed when compared with the amount involved or the interest at stake.

I am, very respectfully,

JOHN H. B. LATROBE,
Of Counsel for Choctaw Nation.

Baltimore, 11 April, 1871.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

WITNESS (after having read letter): Well, that is a letter written by me. It was my recollection at the time that I wrote it, which I am not now competent to state with the same certainty. But there is no doubt that I wrote that letter, and it was a part of my labor.

Q. I see here a communication to the Secretary of the Treasury, dated Baltimore, May 4th, 1871, which seems to be upon the question of interest on bonds. Was that argument made by you at their request—at the request of the nation?

A. I had no other authority but what I got from them. I did not volunteer this thing without authority from those whom I represented. Where I appeared to act for the nation it was at their instance.

Q. I see also a paper signed by you here, which seems to be a reply to a letter written by the Secretary of the Treasury, with reference to the claim against the Government about which you are speaking. Do you remember anything about that? That seems to be a legal argument. I only want to know whether you performed that service in reference to this business and in behalf of the nation?

A. I recollect that letter, sir. That is a close legal argument, if I recollect it right. I recollect the preparation of those papers, and I recollect the trouble of getting them.

Q. Now, Mr. Latrobe, in reference so this business of conducting the professional part of it, was there anybody else employed with you in that line in behalf of the nation?

A. No, sir; emphatically none that I ever heard of.

70 Q. Nobody else?

A. No one but myself. There may have been other people but I never heard of them. I mean here that the various documents which have been offered in evidence purporting to come from me will explain my work.

Q. Was your advice confined to the period when Congress was in session, or did it extend over the whole thing generally?

A. I could scarcely tell you. I took it for granted when the occasion required, and they wanted something done, I would do it, both before and after the session of Congress, in any matter in which they were interested.

Q. Can you give the name[s] of the delegates representing the Choctaw nation, who paid you the visit near Baltimore, on your first acquaintance with them?

A. Well, sir, I recollect Allen Wright—he was one of them. John Page was one, I recollect. There was one named Love and another named Riley. Riley I recollect owing to the question of a saw-mill. We had nothing to do with the saw-mill. Another was named Lewis. Three were Choctaws. The other visitors at my residence in the country were Chickasaws—Winchester Colbert, Holmes Colbert, and others. They were all interested in the treaty of 1866.

The Chickasaws [in lead pencil: Choctaws] only in the net proceeds.

Q. Did you know Peter Pitchlynn?

A. Yes, sir, I knew him very well. He was an old gentleman always about Washington, and whenever I came to Washington I saw him. I am not sure what were exactly the relations between Pitchlyn[n], who had been the principal chief, and the delegation that came. Whether they were friendly or not. But I had a great deal to say from time to time to Mr. Pitchlyn[n], but that would be when I came to Washington.

Q. He was here attending to some business or other for the Choctaw nation?

A. He seemed to be the permanent Indian to look after Indian affairs.

Q. Here in Washington?

A. Yes, sir; that seemed to be his character. That struck me to be his character, and he had a son, whose photograph I have by the way.

Q. How long did this service, this professional work of yourself, continue, beginning say early in 1866 and ending about when?

A. Well, I could not give the exact date. I cannot fix the date, for I did not attempt to do so. It fell into other hands. Other people got into the prosecution of the business here, which I understood to be the lobbying of the case.

Q. Did you ever know Henry E. McKee?

A. No, sir; not to recollect him. I may have been introduced to him, but I cannot recollect him.

Q. Was he ever introduced to you as representing the Choctaw nation?

A. No, sir; not that I now remember. I do not say that
71 I may not have seen him and talked to him on Indian matters, but I have no recollection, though I have tried to recall any matters under this head.

Q. Have you any idea when he came here, to engaged in the business of prosecuting the Choctaw net-proceeds claim?

A. No, sir. All that I know about him is that his name has been constantly mentioned in my presence in connection with Indian affairs.

Q. What had you to do with Jeremiah S. Black in connection with this claim?

A. We were very good friends as practitioners of the Supreme Court, where we met constantly.

Q. Did you render any service for the Choctaw nation in connection with Judge Black?

A. Not that I recollect. I do not recollect ever being associated with Judge Black in that connection.

Q. Do you not recollect that he was introduced into the business, some time or other?

A. Only through what I have heard. I have no knowledge. I once called upon him in connection with the Choctaw business, but I hardly believed that he thought that I represented them, the

Indians; or otherwise our interview might have been more pleasant. We did not quarrel, but when two gentlemen meet together they sometimes find that they may just as well not continue a particular subject of conversation.

Q. Have you a recollection as to the time when Mr. Black abandoned the case?

A. No, sir; I have not.

Q. Can you tell about when you rendered your last service in this matter?

A. I can scarcely tell you, sir.

Q. Did you do anything later than 1871?

Q. You must get the facts otherwise in your inquiry There was a period at which I ceased to be the active prosecutor of the claim, and others took it in charge.

Q. Do you know whether there was any professional lawyer employed to take your place?

A. Not that I was aware of, sir. There may have been, sir, but I never heard of any. I always thought that the negotiations of the treaty of '66, and my subsequent paper in connection with the Cochrane claim for one-third of the net proceeds, which have been referred to, were the foundation of whatever was done.

Q I understand that in this statement, which you have read, which is a short statement of your services, that Mr. Cochrane received $100,000?

A. That was for the negotiation of the treaty. That was independent entirely of the net proceeds. It is proper to add that the settlement with the Indians and the payment to me for my fee was made by Mr. Cochrane, and that when he paid me the
72 $15,000 it was a fee -or services rendered. With the disposition of the balance of the $100,000 I had nothing to do.

Q. Then the $15,000 which you received at that time was not on account of services rendered in reference to the net-proceeds claim?

A. No, sir; not at all; nothing to do with it.

Q. Douglass H. Cooper has been dead for several years, has he not?

A. Yes, sir.

Q. He was formerly connected with the Choctaw nation in some way?

A. No, sir; he was the Indian agent for the Choctaw and Chickasaw nations.

Q. Can you tell us when Mr. John D. McPherson came upon the ground as an interested party in this net-proceeds claim; my impression is that it was after the death of Mr. Cochrane?

A. No, sir.

Q. How soon was it after the death of Mr. Cochrane?

A. I do not know; I cannot tell you. Mr. Cochrane made John D. McPherson his executor, and I suppose that they were intimate friends together; that is an inference of mine; I do not know anything about it.

Q. Had you any dealing with Mr. McPherson as executor of Cochrane touching the net-proceeds claim business?

A. Nothing connected with the prosecution of the claim that I can at this minute recall. Mr. McPherson did not seem satisfied with my authority in the net-proceeds matter, I believe, but I am not sure.

Q. Satisfied with your authority?

A. My authority from the Indians, and he afterwards obtained it from the Indians, as I have understood, and was become satisfied. When he became connected with the Indian matter, I do not know; I cannot fix the date; my connection with McPherson was as executor of Mr. Cochrane, as I now recollect. What previous relations he may have had with Cochrane, I do not know; I do not recollect; I do remember, I think, that his opinion was that the case should go before the Court of Claims.

Q. Did you ever have any contract with Mr. McPherson at any time, that you remember of, Mr. Latrobe, in writing; I show you a contract apparently between you and John D. McPherson, he representing the estate of Cochrane?

WITNESS (reading exhibit): "Whereas the Choctaw nation of Indians have a claim against the United States, known as the net-proceeds claim, the prosecution of which was during his lifetime in the hands of and under the control of the late John J. Cochrane, of whom John D. McPherson is at this time the executor; and whereas the said executor has employed Jeremiah Black, Esquire, for the purpose of aiding in the prosecution of said claim as far as the estate of the said Cochrane is interested therein; and whereas John H. B. Latrobe is at this time the general agent of the said nation at the city of Washington, in the management of and control of such business relations as the said nation has with the United States, and in his character as such agent has also engaged
73 parties to aid in the prosecution of said net-proceeds claim; and whereas it is desirable that all efforts to the end that the said claim may be substantiated and realized should be co-operative as well those to be made under the contract made as aforesaid by the said McPherson with the said Black, as those to be made under the contract made by the said Latrobe as aforesaid, and that this result may be obtained, the said Latrobe as general agent of the said nation hereby ratifies the contract made between the said McPherson and the said Black, so far as relates to the pecuniary compensation stipulated therein, but without relinquishing such power, authority, and control, as the said Latrobe may have from the said nation, it being understood, however, that there shall be paid to the said Latrobe out of the gross sum stipulated to be paid for such services as may be rendered in the case in the contract between the said Cochrane and the said nation or its duly authorized delegates the sum of seventy-five thousand dollars, which shall be regarded as the compensation to the said Latrobe and those employed by him and them in the premises; the balance of the said sum under the contract with said Cochrane aforesaid being paid to the said Black, as compensation for the services of said Black and those employed by him in the premises. Given under our hands this 14th day of September, 1867, in duplicate. Signed, John H.

B. Latrobe, J[o]hn D. McPherson. Witness, R. W. McPherson. The above is in the handwriting of D. H. Cooper, and is, I have no doubt, a true copy of the original agreement of Sept. 14th, 1867, signed John D. McPherson, September 8th, 1883."

It is proper to say here that I had a large correspondence with Mr. McPherson, in this connection, but I regarded him as representing the interest of Mr. Cochrane, but I am not aware that he had any part in the preparation of the argument, which has been offered in evidence as my work in the premises.

WITNESS (after having read paper): Signed witness, R. W. McPherson. I should say that is a copy of it; is it not?

Col. TOTTEN: Yes, sir.

WITNESS: That is not my handwriting, and it does not look like Mr. McPherson's.

Col. TOTTEN: It is Cooper's. Look at the time of the contract.

WITNESS (reading): "The above is in the handwriting of D. H. Cooper, and I have no doubt is a true copy of the original agreement of Sept. 14th, 1867."

Q. Do you know where the original agreement is?

A. Sir?

Q. Have you got the original agreement?

A. Of what?

Q. Of that paper.

A. No, sir; I do not know where it is.

Q. Do you remember of having made that contract with Mr. McPherson?

A. Yes, sir; I recollect perfectly an agreement, which I have always understood, by the terms of which I was to receive $75,000 out of whatever was realized by the Cochrane estate.

74 Mr. APPLEBY: That part of the answer expressing the understanding of the witness is objected to, first because it is a mere inference, and secondly because he has shown that whatever contract was made between them was in writing, which will determine the character of it.

Q. Do you recognize the handwriting in which that certificate at the bottom of the contract is made?

A. I should say that that is Mr. McPherson's handwriting, which I am familiar with. I was sufficiently familiar with his handwriting to say that that was his handwriting.

Mr. TOTTEN: I offer that paper in evidence as Exhibit No. 6 (Six).

Mr. APPLEBY: The underscription of John D. McPherson is objected to as being not evidence, that the copy is a true copy, because he says simply that he believes it to be a true copy, or I have no doubt is a copy of [t]he original agreement. Furthermore, inasmuch as it is offered in evidence it is objected to because the subscribing witness has not been called to prove the original contract, and the original contract has not been shown to be lost or mislaid and no call for the same has been made.

Q. Were you aware of the fact that Mr. Jeremiah S. Black was engaged in the prosecution of these net-proceeds claims, at the time?

A. I have no personal knowledge that I can now recall upon the subject of his employment or his action in the matter.

Q. Did you do anything in or by way of prosecution of this claim in connection with Black?

A. No, sir; not that I can now remember.

Q. Did you render——

A. We talked about it at a later day. We were not connected with the transaction.

Q. Did you talk about it after Mr. Black had abandoned the claim or before, or both?

A. Well, I recollect of once meeting him in the office in the Supreme Court. We were there together, and we talked about the net-proceeds claim, but in a very general way, and that is all I recollect.

Q. You spoke of having furnished to Mr. McPherson the sum of $1,000.00, in this printed paper, which we have here, being your statement. Did you pay him that $1,000.00?

A. That is my belief, sir; that is my belief.

Q. Did you pay him any other or further sum than that?

A. Not that I recollect.

Q. Did you ever get back that $1,000.00?

A. I do not recollect that I ever did, sir. Mr. Tom Scott, when I told him of Cooper's claim, and his condition, sent me $1,000.00 to be applied to Cooper's needs, which were pressing, and in that way I thought that Cooper and Mr. Black and Cochrane were all connected with the matter, but that was too vague.

Q. Have you ever received any money by way of compensation for services rendered in this net-proceeds claim?

A. Not one dollar.

75 Q. Have you ever been at any expense other than this $1,000.00 in relation to the prosecution of them?

A. Yes, sir; in regard to money that I advanced he stands in my debt now about $4,000.00 or $5,000.00.

Q. Any other disbursements in that direction in furtherance of the claim?

A. There was no one to call upon me but Cooper.

Q. Any mo*ey* for documents, or bringing witnesses here or for printing?

A. No, sir; no, sir; my business was that of a lawyer, and I was paying nothing excepting to help Cooper.

Q. You allege in your bill that there were relations existing between you and Cooper and Mr. Mix, which will obligate you to pay out money, provided you ever get any. State what they were.

A. Well, I will state that Cooper, after Mix was turned out of office, entered into partnership with him.

Q. Will you not stop there, and tell me——

A. —and I was their counsel, and Mix's office, in Washington here, was frequented by Cooper, and I used to see him there, and I

found that Cooper and he had a common interest, and then I recognized Cooper and Mix as equally interested with myself.

Q. Cooper and Mix were equally interested with yourself?

A. That is my impression and belief. Well, sir, after the death of Cochrane, I think, or after Cooper and Mix entered into copartnership, and the communications which I had with them, which were of such a nature as induced me to consider them jointly interested in it with myself.

Q. Is the widow of Cooper still living?

A. Yes, sir—a very worthy lady—here in Washington.

Q. Is Mrs. Mix, the widow of Mix, living?

A. I do not know anything of that family.

Q. You do know the fact that Mix is dead?

A. Yes, sir; I know the fact that Mix is dead.

Q. Mix and Cooper are both dead?

A. Mix and Cooper are both dead. But anything about the Mix's I do not know.

Q. Judge Black is dead?

A. Judge Black is dead, and a great man dead, too.

Q. Do you know whether Allen Wright is living or not?

A. Allen Wright I know is dead.

Q. How about Peter Pitchlynn?

A. I only know by report.

Q. What do you know by report; is he dead, according to common and general report?

A. I have heard so, for so many years, that I believe it.

Q. Is it generally understood?

A. It is generally understood that Peter Pitchlynn is dead.

Cross-examination by J. J. WEED, Esq.:

Q. When were you first employed by the Choctaws?

A. Immediately after the war, when they came on to Balti-
76 more along with a Chickasaw delegation on their way to Washington, and staid at my house in the country, spending the night there.

Q. What month?

A. And then I suggested to them——

Q. Well, I do not care about that, if you will answer my questions, Mr. Latrobe. What month of 1865 was that?

A. I could not tell you when they came on. It is a fact that you can ascertain. It was when the delegation first came here. They stopped at my house.

Q. You have no recollection about it then?

A. I know the fact that they were there, and it was in 1865, the war having ended in 1865.

Q. Was it in the summer or fall of the year?

A. When did the war end?

Q. In April, 1865, I believe, or along there.

WITNESS: The battle of Appomattox——

Q. Well, I suppose so——

WITNESS: If you ask me to say what date of the month, or what month, I cannot tell you. I can refer to facts which would satisfy me.

Q. You have not any idea of what month it was?

A. Not in my memory now. I have lived in the country and *and* I lived there all the year.

Q. Was it subsequently to the meeting of the commissioners of the different tribes of Indians and commissioners on the part of the United States at Fort Smith, in September, 1865?

A. That I only know from hearsay. I never investigated the question. I do not answer the question which you put. It was when the Indians met, when Cooley was present, the Commissioner of Indian Affairs, and he told them that the war abrogated their treaties, and with that knowledge in their heads they came to see me.

Q. So that it must have been subsequent to September, 1865, was it not?

A. I do not know whether it was subsequent to the completion of the war—when did the meeting take place—the meeting of the different tribes—when was that event?

Q. It was in September, 1865.

A. Very well, it was September, 1865, because the Indians came to me with the convic[t]ion that Cooley had made upon their minds, that the treaties had been abrogated.

Q. Who was this delegation that came to your house?

A. I have tried to enumerate them already. There was Allen Wright, John Page, one of the Loves, and one or two others. There was the Chickasaw's delegation along with the Choctaws.

Mr. TOTTEN: Was Wade there?

WITNESS: Wade was there. I had their photographs. I can give you their photographs if it is needed for your information.

Q. When did you commence this work of preparing the treaty of 1866?

A. Immediately after I had satisfied myself that the treaty was not abrogated. I then came to Washington as I have repeated.
77 I saw both delegations in Washington. I told them that my investigation had satisfied me that the treaty was not abrogated. During this time I was in communication with Mr. Cooley, and it was determined that there should be a new treaty, but I cannot fix the date of it.

Q. Was it before or after Congress had convened?

A. Well, I cannot tell you—before or after it was convened. I know that the treaty was not adopted until it was in session to confirm the treaty, and I know that it was during the winter that I had my rooms at the Metropolitan hotel.

Q. In drawing that treaty of '66, did you have before you a draft of a proposed treaty that had been submitted at the convention of 1866?

A. No, sir—on reflection, my impression is that such a treaty was presented to the Indians; and I am not certain as I now recollect that I may not have seen such a treaty.

Q. You did not?

A. No, sir. Nothing of that kind, that I now recall, but I do not speak with confidence. I had a rough draft made by somebody who came to me about it—well, it was given to me by the office of the Secretary of the Interior. Some clerk had attempted to draw a treaty, and that was given to me. Well, it did not satisfy me in my views of what was proper and I threw it aside, and therefore I drew the treaty from beginning to end. It is not improbable that I may have been aided in the phraseology of the treaty, which was in type, when I called with it on the Secretary of the Interior.

Q. Do you know what particular provision of that treaty of '66 it was that restored the Choctaws to their rights?

A. You misunderstand; what I meant to say was this, that Cooler had stated to them, as I was told, that the war had destroyed their treaty, and then, by referring to the law, I showed that it did not. I can point out the portion of the treaty which reaffirmed all previous contracts with the nation.

Q. It was the 10th article of the treaty that did that, was it not?

A. You ask me to recollect the treaty; what is the use of recollecting it when you have got the treaty yourself; if it is the 10th article, there it is.

Q. You drew the whole of that treaty, did you?

A. I drew the whole of that treaty, from the beginning to the end. It was in my own handwriting—the treaty of '66, and it was prepared by me and argued seriatim, first to my clients and next to the Secretary of the Interior.

Mr. TOTTEN. Did you explain it to Senator Doolittle also?

A. Certainly; I wanted to tell him that there was a treaty here that was worth entering into, such a treaty as this. There are a great many things provided for in that treaty which have never made their appearance in any other treaty for the Indians.

Q. How long were you at work in negotiating that treaty?

A. Well, sir, I was—I passed my winter here in Washington, and during that time I was at the Metropolitan hotel, *ington, and*
78 *during that time I was at the Metropolitan hotel* and at work at that treaty; not every moment, but it was my business. I had a business in Baltimore, which I attended to, and I went to and fro, and I had rooms in the Metropolitan hotel.

Q. I will ask you to look at that draft of a proposed treaty, submitted by the Choctaws in 1865, and I will ask you if you have any recollection of seeing anything like that or anything similar to it?

A. I have no recollection of it. I may have seen it, but I do not recollect it. I will say that at once.

Q. I am showing you the proposed treaty with the Choctaws consented to in October, 1865?

A. I have no recollection of seeing it, though I may have seen it.

Q. Have you any recollection of seeing any manuscript report of the transactions between the commissioner on the part of the United States and the different delegates who met at Fort Smith in September?

A. I have no recollection of it.

Q. You have no recollection of that?

A. I have no recollection of it.

Q. In what shape was this decision of Judge Cooley's that the treaties of the Indians had been abrogated communicated to them?

A. Only because the Indians told me so. Mr. Cooley talked over the matter, and that was his opinion as I understood it at the time.

Q. You do not know whether the Choctaws and the commissioner on behalf of the United States had had a discussion on the subject of the treaty previous to the time that you commenced writing?

A. I knew only what took place in the city of Washington, and I never heard of such a discussion.

Q. Did the delegation that came to you in 1865 bring you any documents or papers?

A. Nothing at all.

Q. Nothing?

A. Nothing at all; they brought me nothing.

Q. During the time of your investigation on this subject at the Indian office, did you have access to any papers that had passed between the Indians and the authorities of the United States on the subject of their relations?

A. I have no recollection of any.

Q. You do not recollect anything about that?

A. I have no recollection excepting a draft of a treaty presented to me—a paper by one of the clerks in the Interior office, and that I did not use. If I used any part of it I do not recollect.

Q. I read you article ten of the treaty of April 28th, 1866, found on the 14th Statutes at Large, page 774:

(Reading:) "Article X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other monies accruing under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the thirtieth of June in the year one thousand eight hundred and sixty-six."

79 WITNESS: I recollect that very distinctly.

Q. Have you any recollection about that provision of the treaty?

A. What—renewing the payment of the annuities?

Q. What part you had in drawing it, if any?

A. I have no recollection of that, sir. I have no recollection of anything relating to the payment of that. The treaty will, however, speak for itself.

Q. Can you give us an idea of how many months you were engaged at this work for the Choctaws?

A. Well, sir, I was in active practice in Baltimore, and I came to Washington, to and fro; I vibrated like a pendulum between the two places, and I came here whenever I thought I could be of service.

Q. Can you give an approximation of the time that you did consume?

A. No, sir; I cannot tell you.

Q. Do you know when the treaty was signed by the Indians and the representatives of the Government?

A. No, sir, not from memory.

Q. And you cannot give us any idea of the time that you were occupied in doing that work?

A. No, sir. I cannot, sir. I cannot of the time. By time, you mean the number of days?

Q. The number of months—I do not care whether months or years?

A. Well, I suppose it was before Congress adjourned.

Q. The time that you were occupied at that business was between the convention of Congress and the date of the ratification of the treaty?

A. The time that I got in my work was during that winter. I saw that I would have to be here some time; that I could not do the work at my office; that I must have constant consultation with the Indians themselves, and I took rooms at the Metropolitan hotel, took a room there, and I came and went between the two, my office and that.

Q. Who were you in consultation with in behalf of the Choctaws during the time that you were making a draft of this treaty?

A. At times they would be up in my room along with the Chickasaw delegation.

Q. Who do you mean by they?

A. Allen Wright, John Page, William Riley, whoever the delegates were. I would ask them to meet at my room on certain occasions.

Q. You mean the delegation that met first, met at your house when they first came here?

A. I think that they were the same persons, the same people who employed me. I think that there was a man by the name of Jones. I am not sure.

Q. Did you during that time have any communication with Governor Pitchlynn, or Israel Fulsom, or Peter Fulsom?

A. Very possibly, very possibly. I do not say that I had not.

Q. Or Dickson W. Lewis?

A. I would see Pitchlynn, and I would talk to him about
80 the treaty. It was in my mind. I have no recollection of any conversation with Lewis, or seeing him even.

Q. For the work that you did at that time you were paid one-third of $50,000, were you?

A. With regard to the fee which was paid me, that was negotiated entirely by and passed through Mr. Cooper and Mr. Cochrane. Mr. Cochrane was the man who gave me the money.

Q. $100,000 was paid for the negotiation of that treaty by the Choctaw nation, was it not?

A. That I have understood, for the Choctaws and Chickasaws.

Q. Now, one-half of it went to the delegation who negotiated the treaty for the Choctaws?

A. That I have understood.

Q. The other half went to you—was divided between yourself and Cooper and Cochrane; was that so?

A. I got $16,000, sir—$15,000 or whatever it was. I have stated it there.

Q. It was divided equally between you three? Is that so?

A. Well, I believe so, sir.

Q. Now, when did you make your agreement with Cochrane; how long after the negotiation of this treaty was it you made your agreement with Cochrane?

A. I could not fix the date. I cannot attempt to fix the date.

Q. You say your agreement with Cochrane was never put in writing?

A. Not that I am aware of; not that I now can recollect. I have seen it stated in writing, but not that I could recollect as being signed by Cochrane and myself.

Q. Well, then, you never had any employment, with reference to the prosecution of the net-proceeds claim, except through the instrumentality of Cochrane?

A. Never. He was *functus officio* when the treaty was made.

Q. After that time you were working with Cochrane under his contract as you have understood it; was that so?

A. Well, I was working for the Indians, under authority confirmed by them, and it recited in one of the papers, which I have read this evening, which seems to me to be exactly the fact, that I was working for the Choctaws, for the net proceeds.

Q. But you had no agreement with the Choctaw nation for that specific service, did you, or for any compensation for that service, did you?

A. My claim entirely grew out of Cochrane's claim.

Q. Exactly. That is what I want to get at.

A. Whatever Cochrane was entitled to, I considered myself entitled to a portion of it.

Q. And that portion was one-third?

A. My recollection is that it was one-third. I think the other one-third went to Cooper, and then it came to be Cooper and Mix.

Q. When did you commence the work of pr[e]paring papers on the subject of the net-proceeds claim, after your agreement and arrangement with Cochrane?

81 A. The papers which have been read in evidence; these agreements are dated. I could not rely upon memory, sir.

Q. Do these papers, to which you have referred as being printed in the printed pamphlet, from which you have been examined, constitute all the papers that you prepared for the Choctaw nation, during the time of your employment?

A. I am not prepared to say that they did or that they did not.

Q. You are not certain as to whether the papers in this pamphlet represent the extent and the character of the work that you did and performed for the Choctaws in that case, are you?

A. I do not think that they did.

Q. What other papers did you prepare, if they were not included in here?

A. I do not recollect at this time; I cannot recollect, but they were my clients with whom I was in consultation.

Q. When you prepared and submitted this statement from which you have read out of this document, which is Senate report No. 1978, 49th Congress, you attached to your statement all the papers that you could identify as having been prepared by you during that service, did you not?

A. This investigation had been going on here recently, and I have looked over all the papers which had accumulated, and from such as related to this subject I gave my counsel, Mr. Fendall, these.

Q. I understood that you said that you never appeared before any committee of Congress for the purpose of making an argument on the net-proceeds claim.

A. Not that I can now recollect.

Q. Did you ever at any time appear before the Attorney General for the purpose of making any question there?

A. I could recollect that; I certainly did not, because it has been the habit of my life to avoid that kind of business in making an argument to what is known in common parlence by pushing the case by appealing——

Q. Did you know whether the right of the Choctaws to the $250,000 in bonds had at any time been referred to the Attorney General for his decision?

A. I have no recollection about that. It may have been or may not have been. I know nothing about it.

Q. You have no recollection of having read the opinion given by the Attorney G[e]neral on the subject?

A. It may be possible, but I do not recollect.

Q. You never appeared before any Congress anywhere in behalf of the Choctaws, in regard to this subject, did you?

A. No, sir.

Q. Were you known as a member of the firm of Charles E. Mix and Company?

A. Who was a member?

Q. Were you known as a member of the firm of Charles E. Mix & Co.?

A. Who was a member?

82 Q. I ask you if you were.

A. No, sir; I was not a member.

Q. You were never a member of that firm?

A. No, sir; I was their counsel. No, sir; I was not a member—unquestionably no. About that there can be no question.

Q. Then you are under no legal obligation to account to either of the estates of Mix or the estate of Cooper for what you may recover?

A. I have never considered the question of legal obligation I know

that these two gentlemen worked with me in this matter, and I thought if I got the money, it was my business to divide it.

Q. Do you know anything about the contract made between Cooper for the employment of the services of John S. Davis and Perry Fuller?

A. No, sir; I do not. Let me understand——

Q. I find at page[s] 121 and 122 of the pamphlet, to which reference has already been made, an agreement between yourself and John S. Davis and Perry Fuller; it seems to be signed by D. H. Cooper and John H. B. Latrobe, by D. H. Cooper; did you know anything about that contract?

A. That was Cooper's; I do not know; I knew nothing about it at the time.

Q. You had no interest in the purpose—the basis of that contract then?

A. Not that I can recollect.

Q. Do you know whether they were brought to your knowledge at the time when the contract was made?

A. I have no recollection now.

Q. You have no recollection of it?

A. No, sir.

Q. You never had any interviews or communications with Mr. McKee in this matter?

A. I never saw him to know him, although I am not prepared to say that I may have met him, but I do not recollect the occasion or the circumstances.

Mr. APPLEBY:

Q. You have put in evidence what purports to be a copy of a certain contract between Mr. John D. McPherson, as executor of Cochrane, and yourself. Have you with you a paper signed by you and Mr. McPherson at or about the same date explanatory of that contract or varying it in any respect?

A. No, sir; I have no recollection of any such paper; any paper varying it.

Q. Have you any recollection of any paper explaining that?

A. As a matter of memory, I should say that I have no recollection. You may show me something that I ought to have recollected and do not. But I have no recollection of it.

Q. Please look at this paper, purporting to be dated on the 14th of September, 1867, purporting to be in duplicate, and an agreement reciting the payment of the $750,000, and state whether or not the same is signed by you.

83 A. It is in my own handwriting. There is no doubt about it, sir. There is no doubt about it, and that shows the importance of requiring a man to produce a paper before one is positive.

WITNESS (reading the paper): Whereas an agreement has been this day entered into between the undersigned stipulating for the payment to John H. B. Latrobe, one of the parties, of seventy-five thousand ($75,000.00) dollars in consideration of the services in the

said agreement mentioned, and as is therein set forth, it is now declared be the understanding of the undersigned that the said $75,000.00 is to be paid out of the first monies that shall hereafter come into the hands of the undersigned executor of John T. Cochrane under the contract between him and Jeremiah S. Black, and not otherwise. Given under our hands and seal, this 14th day of September, A. D. 1867, in duplicate. Signed John H. B. Latrobe and John D. McPherson. Witness, R. W. McPherson. United States internal revenue stamp.

WITNESS: That is my handwriting, and I undoubtedly signed that paper, but I did not recollect it at the time.

Q. Mr. Latrobe, when you obtained the consum[m]ation of the treaty, and when you obtained your part of the $100,000, were you at that time entitled to any other fee for services rendered to the Choctaw nation?

A. Not that I am aware of. Not that I am aware of.

Q. Did you consider yourself entitled to a sum of over $14,000 that had been appropriated by the Choctaw council in November, 1861, or thereabouts?

A. I never received any portion of it if I was entitled to it.

Q. Did you ever know anything about the appropriation?

A. No, sir; I never did know anything about it. That is, it may have taken place.

Q. For the services rendered by you up to the date of that treaty, in '66, you had been paid in full when you received your proportion of the $100,000.00?

A. I so considered it, and I regarded my subsequent agreement with Cochrane as——

Q. Did any of your contracts or contract by which you were obligated or obligated yourself to pay into the Mix estate, or into the Cooper estate, any portion of any sum that you might claim, including the net-proceed claim?

WITNESS: I understood that I was to be paid $75,000. That has already been mentioned. Of that I held myself bound to account to the Cooper family for $25,000, and [t]o the Mix family for $25,000, and reserving $25,000 for myself. But I had no written contract that that division was to be made.

Q. Your contract or contracts with the Indians did not include the net-proceeds claim, did it?

A. My original contract with the Indians was for the treaty of '66, and that was settled when I was paid as I have already stated. But then afterwards I made a contract, or agreement rather, with
84 Mr. Cochrane, which was afterwards ratified, I understood, by the Indians, for his proportion of the 30 per cent., which was $75,000.

Q. Cooper and Mix were lobbyists, were they not?

A. Well, now, I do not want to give any one that name. They were persons acting at the Indian agent here in Washington.

Q. What was Cooper's position under the United States Government?

A. He was Indian agent for the Choctaws and Chickasaws.

Q. What was Mix's position?

A. Mix had been the Secretary of the Interior—I think—had he not—or in the Indian office—Secretary's office—and then he was turned out, and then he and Cooper entered into an agreement connected with the Indian business; that is what I understood.

Q. Was Mix a member of the bar?

A. Well, he may have been.

Q. Not to your knowledge, was he?

A. No, sir.

Q. Was Cooper a member of the bar?

A. Yes, sir; Cooper was a member of the bar, but not of this bar. He was a lawyer by education.

Q. Had he ever practiced at the bar?

A. I never heard of him as a lawyer, sir.

Q. Now, what was the character of service that Cooper or that Mix jointly or severally were expected to render?

A. Well, sir, that I cannot tell you. I was in Baltimore, and they were in Washington, and we corresponded frequently upon the subject, constantly, and I saw Cooper, and we would talk over this whole matter, but the nature of his services here I do not know.

Q. How was it, that if you had been paid for the services rendered by you up to '66, the negotiation of that treaty, and had shared with Mix and Cooper under the contracts under which they were entitled to a share, that you consider Mix to be entitled to $25,000?

A. Mix never was entitled to a portion of the fee for negotiating the treaty of '66.

Q. And that you considered Cooper to be entitled to $25,000?

A. Because I would be entitled to $75,000, and I considered that it was his due and right, and as an honest man I would have to carry out my conviction upon the subject, but there was no written agreement upon the subject between us at all. They, Mix and Cooper, were working here in their own way for the confirmation of the business of the Indians, in connection with the net-proceeds claim, as I have understood.

Q. But did you know how they were working?

A. No, sir; I do not.

Q. And yet you *are* willing to give them each $25,000?

A. I was.

Q. Without knowing how they were working or what they were doing?

A. That is true. I could not point out any particular visit they paid or any lobby they might have gone into.

Q. Now was this $25,000 to be paid to Cooper paid in consideration of those services or to be paid in consideration that he would not do something in the future?

85

A. Oh, no. The money was to be paid to me, and then it was for me to divide it among those whom I thought entitled to it. That was my own conviction of it, and Cooper and Mix had been at work on the business.

Q. Was not Cooper to be paid $25,000 if he should not obstruct any litigation?

A. Oh, no sir; no arrangement of that kind at all, not the slightest.

Q. Was not Mix to be paid $25,000.00 in case he should not obstruct litigation which Black might initiate?

A. There was nothing of that kind.

Q. Do you know why Black abandonned the case, as Col. Totten has stated in one of his interrogatories to you?

A. No, sir; I do not know, sir.

Q. Do you know what lobby it was that appeared in opposition to Black's endeavors?

A. I do not know, sir, anything at all about it.

Q. Do you know whether Cooper or Mix headed any such lobby in opposition to Black?

A. I do not know anything of Mr. Mix's conduct here or Cooper's either. My general impression was that they were doing what they could to promote the Indians' interests.

Q. Do you know anything of Tom Scott's connection with the lobby?

Mr. PHILLIPS: I object to that.

A. Nothing at all except that he paid me $1,000 when Cooper was in distress, and wanted the money, and he sent me the money.

Q. Do you know why he paid that money?

A. I think it was from his kindness of heart. If you knew Tom Scott and the story I told him of Cooper's suffering family——

Q. Do you know the date?

Mr. PHILLIPS: I object to that.

WITNESS: I know nothing at all about it. I recollect distinctly that one day I told Mr. Scott in Philadelphia that Cooper was suffering very much, and that I was helping him as much as I could, and his family was suffering, and that I would like him to help him. He said Well, Mr. Latrobe, I am very hard up now, and I thought that he would not do anything. Three or four days later I got 10 one-hundred-dollar notes. I wrote him a letter, which I could furnish you a copy of, in which I thank[ed] him for his very generous act.

Q. Mr. Latrobe, did you not advance money in these matters to help other persons than Cooper? Did you not advance money to help Peter Pitchlynn?

A. No, sir; not a dollar, not a penny. I did not advance any money. It was a private account that I kept with Cooper.

Q. I should like to have that letter of thanks, to which you have referred, produced in evidence. It would fix the date if nothing else.

A. Well, it was thanking him. It was a letter of gratitude.

86 Mr. PHILLIPS: I have no objection on the part of the executors of Scott.

Q. Do you wish to produce the letter, or do you decline to refresh your memory by referring to that letter and furnish the date of it.

A. No, sir; I do not decline. It was in Dec., 1873, to the best of my recollection.

Q. Do you decline to refer to it to refresh your memory by looking at the letter to ascertain the date of it?

A. I will answer the question for you if you put it in that shape. I will send you by telegraph or telephone a copy of the date, if I have got a copy of the letter; and I will send you a copy of the letter in which I dwell upon that act of liberality on his part. Those who knew Mr. Scott would know that he was the most generous fellow that ever lived.

Q. Mr. Latrobe, do yo[u] know what services Mr. Jeremiah S. Black rendered?

A. None except what I have heard, and that is not evidence, but I am willing to state that if you want to know it, it was because of his opinion that the net-proceeds claim was a good claim that induced Scott to make the advance that he did. It was Mr. Black's opinion to Tom Scott that the claim was a good claim that induced him to advance the money.

Mr. APPLEBY: I object because not responsive.

Q. Do you know what Jeremiah Black did in connection with the claim?

A. No, sir.

Q. Do you remember when John T. Cochrane died?

A. No, sir; I do not recollect when he died.

Q. Do you recollect when Cooper died?

A. No, sir; not to fix the date. I only know that he is dead, and that he died some years ago.

Q. Do you remember when Mix died?

A. No, sir, I do not remember when Mix died.

Q. Do you remember when Judge Black died?

A. No, sir, I do not. I do not recollect.

Q. Do you remember when you first read the report, or heard the report that Pitchlynn was dead?

A. No, sir, I do not, indeed. I do not recollect. I recollect of hearing that he was dead. It may have been a year or two afterwards.

Mr. W. H. PHILLIPS:

Q. I have only one or two questions to ask you. You have testified as to an agreement that you made with Mr. McPherson for your compensation for services in the net-proceeds claim. Was any other agreement made with you, except the one or except the two that you have testified to?

A. Not that I recollect of, but what is in writing there. That is all I remember, sir.

87 Redirect examination by Mr. TOTTEN:

Q. Mr. Latrobe, I want to know a little further about the confirmation by the Choctaw nation of your arrangement with Cochrane. You made an arrangement by which he was to divide the compensation which he obtained with you, or rather what he might obtain with you. Now you say the Choctaw nation ratified and confirmed that arrangement?

A. That is my impression; that is my belief.

Q. Now, did you carry on a correspondence with them, or did you make any arguments or briefs for them, in their behalf, as their attorney, after the treaty of '66 had been consum[m]ated?

A. Nothing, except what is in the papers which have been read.

Q. Now, I find in this report, which we have been talking about—this report No. 19078, Senate report of the 49[th] Congress, second session, what appears to be an argument submitted by you in answer to a letter of the Solicitor of the Treasury and the Secretary of the Treasury, which bore date January 6th, 1873. I invite your attention to it.

WITNESS (reading letter):

This claim rests upon an award of the Senate of the United States in favor of the Choctaws under the eleventh article of the treaty between the United States and the Indian nation of June 22nd, 1855. The eleventh article is in these words:

Article 11. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27th, 1830, and so e[a]rnestly contended for by the Choctaws as a rate of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is, therefore, stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States, by the treaty of September 27th, 1830, deducting therefrom the cost of their survey and sale and all just and proper expenditures and payments under the provisions of said treaty, and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold in order that a final settlement with them may be properly effected; or

Second. Whether the Choctaws shall be allowed a gross sum in full satisfaction of all their claims, national and individual, against the United States, and if so, how much. ("U. S. Stat. at Large, vol. 2, 613"); the 12th section declares that the "adjudication and decision of the Senate shall be final."

Perhaps a few Indian treaties were more careful[l]y considered than this treaty of 1855. The solicitor, at page 13 of his letter, refers to "the long correspondence which thereupon ensued between the department and the delegates," and "the much controversy" that

was had before the parties came to a mutual understanding.
88 The treaty was a most important matter to the United States.

The march of population westward threatened to tread out the remnants of Indians still to be found on their reservations. For these, homes had to be provided, to prevent a recurrence, in Kansas and elsewhere, of the circumstances which, in Mississippi and Tennessee, had been prevented from becoming disastrous by the treaty of 1860. The Indian Territory offered a suitable locality, but the Choctaws were the owners of it in fee simple, under grant from the United States, so long as they continue to exist as a nation and their present possession could not be interfered with without their consent. The importance of procurring this assent lead to the treaty of 1855. "In April of that year," says the solicitor, "the question of claims under the fourteenth and nineteenth articles of the treaty of 1830 was reopened by the United States in connection with other matters of importance to the Government." "The United States wanted to settle other tribes of Indians in the Indian Territory." On the 9th of April, therefore, the Commissioner of Indian Affairs instructed the Choctaw agent to ascertain what arrangement could be made to settle all the differences between their tribe and the Chickasaws and the Government of the United States, and the permanent settlement of the Wichita and other bands of Indians in the Choctaw country. The delegates were disposed to settle these questions. They considered the great object of their mission to be a settlement of their claims alone, "and they would not consider the Wichita question unless coupled with and made a part of a just settlement of their claims." (See the Solicitor's letter, page 13.)

Finally, a mutual understanding was reached and the treaty, on the eleventh article of which we have already quoted, was entered into, and the United States at once realized all the advantages from it which they anticipated in taking possession of the land described in it between the 98th and 100th degre[e]s of west longitude. This was upwards of 17 years ago. The Choctaws are still imploring Congress for their share of these advantages.

The treaty having been made, the award came next. This was in the shape of the following resolutions, adopted by the Senate on the 9th of March, 1859. (See Senate Jour., second session, 35th Congress, 1858–'9, 1862, 493.)

"Resolved, That the Choctaws be allowed the proceeds of the sales of such lands as have been sold by the United States on the first of January last, deducting therefrom the cost of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservation allowed and secured, and estimating the scrip issued and value of reservation at $1.25 per acre; and also that they be allowed 12½ per acre for the residue of said lands.

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws showing what amount is due them according to the above-described principles of settlement, and report the same to Congress." Then followed the report of the Secretary, making the balance due the Choctaws $2,981,247.30. This sum was

reduced by the Committee on Indian Affairs in the Senate to
89 $2,332,560.85, by deductions which are best described in the report of the House Committee on Indian Affairs, July 6, 1868 (40th Congress, second session, House of Representatives, 77), as follows:

"It is difficult to see why under the treaty the Indians should be charged with ten cents per acre on the unsold land amounting to $451,057.50, or with the money and lands given away by Congress to the State of Mississippi amounting as shown to $286,595.75, and to 2,292,766 acres of land; but as a speedy settlement was earnestly desired the Choctaws have not therefore been disposed to question it, and the facts are referred to for the purpose of proving that the Senate Committee, in their report oto the Senate, when acting in the character of referee, did not show any favor to the Indian.

In 1861 the claim under the Senate award came again before Congress, and on the 2nd of March Congress appropriated $500,000 in part payment of it in the following words:

"For payment to the Choctaw nation of Indians on account of their claim under the eleventh and twelfth articles of the treaty with said tribe or nation made June 22, 1855, the sum of $500,000; $250,000 of which sum shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be paid to the proper authorities of said nation or trieb on their requisition, bonds of the United States authorized by law at the present session of Congress; provided that in adjustments of the claim of the Choctaws under the treaty aforesaid the sum shall be charged against the said Indians.

The foregoing is as brief a statement of the facts as can be made, having in view a reply to the letter of the Solicitor of the Treasury, accompanying that of the Secretary, dated January 6th, 1873. And upon this statement it is contended that the award made by the Senate was binding on the United States and the Choctaw nation from its date, and that neither party, without the assent of the other, has the right to modify or repeal it.

This the solicitor of the Treasury denies, and the scope of his argument is to be found in the last two paragraphs of his able and exhaustive letter. He says, I have thus as carefully as time would permit, set forth in detail the history of this celebrated claim.

Now, from this history, it appears beyond doubt that its basis is the alleged right to reservations under the fourteenth article of the treaty of 1830; that, under this article, a large number of reservations beyond what the Choctaws were legally entitled to were allowed by the Government, although, on the evidence, absolutely fraudulent. But however this may be, Congress, before they finally paid them, determined that the Choctaw nation should give solemn acknowledgment that they should never thereafter make claim to reservations under the article as a condition precedent to paying those which had already been allowed. This the nation having done the claim, as it seems to me, should be regarded as completely barred by Congress."

The solicitor refers here to an act of Congress passed June 30,

1852, just three years prior to the date of the treaty of June 22, 1855, and his idea would seem to be that the Indians, having "guaranteed," as he says, "to make no further claim if paid the sum of $872,000, under the fourteenth article of the treaty of 1830," neither the United States nor the Choctaws were competent to enter into a treaty three years afterwards, releasing the latter from their guarantee and permitting them to satisfy the Senate, if they could, that they had been wronged in the past transactions with the Government, because if the present claim under the treaty is barred by the supposed guarantee, the solicitor's argument amounts to this. Surely it is only necessary to put the solicitor's proposition into this shape to see that it is utterly untenable, to say the very least of it. But the document referred to by the solicitor and appended to his letter contains no such question. It is nothing more or less than a release in the ordinary form of such an instrument in which, after reciting the act of June 30, 1852, the general council of the Choctaw nation ratifies an[d] approves the final payment and satisfaction of certain awards under the fourteenth article of the treaty of 1830 as a final release of all claims of such parties (those in whose favor the awards were made) under the article aforesaid.

Why the solicitor should have deemed it proper to speak of this release as a "solemn acknowledgment that the Choctaw nation should never thereafter make claim against reservations under the article," I do not understand. The release speaks for itself. A question might be raised here, were it at all necessary, as to the right of the Choctaw nation in its sovereign capacity to bar individual claimants and their representatives by the release signed by the president of the senate and the speaker of the Choctaw house of representatives. "The fourteenth article" says the solicitor (page 4), "was put in for the benefit of these Choctaws, heads of families only, who decided to remain and become citizens of the United States." How far the Choctaw legislature could affect the rights of these persons, out of whose rights alone, as the solicitor states, grew the "net-proceeds claim," might well be doubted.

But it is not necessary to rest the claim on any such point. Its basis is the treaty of 1855, and it is hardly to be supposed even that during the long negotiation that preceded it and which the solicitor refers to, the payment under the act of 1852 and the release of the legislative body of the Choctaw nation were overlooked. On the contrary the eleventh article of the treaty would seem to recognize, in the alternize proposition to that which was adopted by the committee both the payment and the release; thus, second, "whether the Choctaws shall be allowed a gross sum in further and full satisfaction of their claims, national and individual against the United States, and, if so, how much?"

In the quotations of the solicitor's letter from the eleventh article of the treaty, the words underscored above have been inadvertently omitted. They are not without significance, however. The Senate was to decide whether more was not to be done towards satisfying the Choctaws than had been done; in truth the Senate was virtually

instructed by the treaty that past settlements between the
91 United States and the Choctaws were not to bar the latter in the present claim for further satisfaction.

So much, therefore, of the solicitor's argument as rests upon the release of 1852, falls to the ground before the subsequent treaty, and in its fall involves the entire argument; for the whole letter is directed to a history of the claim from the beginning, for the purpose of showing that it is but a rehash of one which is absolutely and forever barred by the release in question.

It is very true that another object is aimed at in the very exhaustive narrative of the solicitor. Its purpose is to show that fraud[s] of all kind were mixed up with this claim from the beginning, and that it was one which the Senate never should have recognized. Still that does not change or qualify the fact that the Senate did recognize it, and, in the exercise of its unquestioned authority, as referee, pronounced the award, which the solicitor would now have the United States repudiate, treating it as though it had never been made. There stands the award, and upon this the Choctaw nation rests its case. It is not intended, however, to admit by any means that the award of the committee of the Senate, of which Mr. Sebastian was chairman, and which put the award in the shape of the resolutions that the Senate adopted, were not as well qualified to come to correct conclusions in this connection as any other committee or individual undertaking the investigation at the present time. They had all the information now spread upon the solicitor's letter. They were thirteen years nearer the transaction out of which the claim arises. It is only necessary to read the report of the committee, which it is now sought to prove was erroneous, to see how full and exhaustive it is, how it states the arguments on both sides, and how it abounds in detail showing careful investigation. It resulted in the adoption of the resolutions of the Senate, which were the award authorized by the treaty, and upon which it is again repeated, the Choctaw nation rests, takes its stand. But while the treaty of 1855 and the Senate award are thus relied upon as affording a full reply to the conclusions of the solicitor, there are some matters stated in his letters that is hardly proper, writing in the interest of the Indians, to pass without notice at this time. The solicitor is an able lawyer, who may claim to speak *ex cathedra*, if not with infallability. In referring to a letter from the Choctaw delegates to the Secretary of the Treasury, of June 20th, 1872, in reply to one from the solicitor of the 29th of the preceding May, he says, "while I admit that an act of Congress can repeal a treaty, it is evident," &c. Not having the letter of the delegates before me, I am not able to quote its words; but whatever they may have been, it is difficult to believe that they could have amounted to a proposition which, with the greatest respect to the solicitor, it is so unquestionably unsound as that one party to a contract (and a treaty is but a contract between two parties) may avoid it without consent, express or implied, of the other. They may consent to modify it, they may mutually abrogate it, but that either alone

may impair it, the Indians who have made treaties with the
92 United States are the very last parties in the world to admit. But it is not an[d] cannot be law.

Again the solicitor dwells upon the language of the act of 1861, appropriating $500,000 to the Choctaw nation "on account of their claim under the eleventh and twelfth articles of the treaty of 1855," as showing that neither the Senate nor the House regarded the previous action by the Senate as a board of referees, as binding, "because the proviso that in the future adjustment of the claim, the Choctaws" under the treaty aforesaid, "the said sum shall be charged against the Indians." (See solicitor's letter, page 21.) This is a verbal criticism, the force of which is not perhaps properly appreciated. When the Senate and the House directed the payment to be made "on account of the claim under the eleventh and twelfth sections of the treaty," they recognized the latter as giving to the Indians claims in addition to those released under the act of 1852; and inasmuch as the Choctaws under said article could have no claim to the $500,000 except through the Senate's award, which was a condition precedent to a claim for a single dollar, the appropriation was as absolutely a recognition of the binding character of the award as could possible be desired. Not only was it recognized, but a payment was, in so many words, made on account of the treaty. What does the solicitor say, at page fourteen of his letter, but that by the treaty of 1855 "the Government solemnly asserts that they are not prepared to assent 'to this net-proceeds claim.'" It is true that there is no such solemn assertion in the treaty which speaks kindly of the Choctaws and their sacrifices and services, but giving to the treaty the solemn denial of right that the solicitor claims for it, is it probable that Congress, entertaining like opinion which it is the object of the solicitor to prove never has been the case, would have appropriated $500,000 on account of it, on account of a claim that the solicitor says the "executive department never for a moment could have missed, it was so confessedly shadowy and undefined, the delegates themselves said that they could not prove it;" certainly this is not the habit of Congress, nor did Congress act so in this case. The award of the Senate, and the award alone, gave the Choctaws the standing before Congress which authorized the payment "on account."

Among the minor matters of objection in the solicitor's letter are the facts, which he states, connected with the passage of the resolution, which was the award, the remarks of members of the Senate on the occasion, statements t[a]ken from the Congressional Globe and the like. But surely the solicitor is too good a lawyer to deny that what takes place in debate, prior to the passage of a law, cannot be considered in construing it, nor will he, it is presumed, contend that the hour during a session at which a law is passed affect[s] its validity. And it is certain that he will most readily admit that in the absence of fraud, which is never to be imputed, the existence of a law upon the statute books proves its validity, and that the law itself furnishes the best guide to its interpretation.

There stands the award, and, it is again repeated, the claim of the Choctaws rests upon it.

93 Whether Congress, with the power to refuse or appropriate, will continue to do so and so nullify the Senate award, cannot be foretold. Certainly the Choctaws have no power to compel them to stand by their contract. Had the nation, after the treaty of 1855 was ratified, refused to give possession of the leased district to the Indian agent, the President would very soon have ordered a regiment to carry out so much of the treaty as the United States were interested in. Without such power, the Choctaws, whose intercourse with the United States has taught them at least lessons of patience, can only hope in the end they too will obtain their share of the advantages of the treaty.

(Signed) JOHN H. B. LATROBE,
Of Counsel for the Choctaws.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

WITNESS (after reading:) Choctaw claims.

Q. Tell me whether that was in pursuance of your employment by the Choctaw nation, or whether it was only in consequence of your relation with Cochrane?

A. Oh, it was in relation to the Choctaw nation.

Q. Then your employment by the Choctaw nation did continue after your relations were commenced with Choc[h]rane?

A. Yes, sir.

Q. Now, I will ask you to refer to this paper (Exhibit 5).

A. Well, I have already proved the handwriting of that.

Q. Now, having refreshed your recollection about that I want to know what your relations with the Choctaw nation were, after the consu[m]mation of the treaty of 1866?

A. Well, sir, I was corresponding with Mr. Wright——

Q. I want to know whether you regarded yourself or whether or not you were in fact the counsel of the Choctaw nation as well as the associate of Cochrane.

A. Under that letter I certainly was.

Q. But as a matter of fact I want to know.

A. In point of fact I must have been. You know I was acting for them.

Q. I find another paper addressed by you bearing date May 4th, 1871, which you have already looked at. That is an argument apparently in favor of the rights of the Choctaw nation. I also find another on the page preceeding that dated April 15th, 1871. Now, I want to know after having refreshed your recollection on that subject by reference to these papers whether your service continued up to the treaty of 1873 by the Choctaw nation.

A. Certainly, under my arrangement with Cochrane, which was confirmed by the Choctaw nation.

Q. Exactly. Then your services were rendered from 1866 up to 1873 for that nation in conjunction with Mr. Cochrane?

A. That was the fact.

Q. That was the way of it?

94 A. Otherwise those letters would not have been written.

Q. Now is it or not a fact, Mr. Latrobe, that your correspondence and arguments constituted a great deal more *than* than is found in this report, which I have in my hand of the 49th Congress?

A. I have already said that I have no doubt that the relation between counsel and client would involve other than what was written on paper.

Q. You have a basket full of papers, have you not?

A. I have a basket full of papers in relation to the Indian business.

Q. It would be a b*id* basket, would it not?

A. It was the trouble of my life, the correspondence which grew out of this business.

Recross-examination by J. J. WEED, Esq.:

Q. Did you ever have from the Choctaw nation any other recognition of your authority to act or appear for them as their agent, or counsel, than is contained in the paper marked Exhibit 5?

A. I was acting for them now, as it appears, all along through the employment of me by Mr. Cochrane, and it appears that they came in and ratified that employment.

Q. Now you have hardly answered my question. Will you pardon me. My question is this. Whether or not you had from the Choc- nation as a nation any other authority or employment as their counsel or their attorney than is contained in Exhibit 5 that you have put in evidence?

A. Do you mean to ask me whether the nation under their seal of authority gave me a special contract, authorizing me?

Q. Yes, sir.

A. No, sir; they did not.

Redirect examination by Mr. TOTTEN:

Q. Were you from time to time all along through this series of years consulted by the delegates representing the Choctaw nation?

A. Up to a certain time I was. After a time they got delegates here with whom I had no connection.

Q. You cannot fix that date?

A. No, sir.

Q. It appears here, that you were writing arguments up to late in 1873?

A. It must have been after that.

Q. That these other delegates came?

A. That these gentlemen took the matter out of my hands.

Recross-examination by Mr. WEED:

Q. Did you ever have any consultations with Governor Pitchlynn on this subject respecting your employment?

A. Well, sir, as to the date; do you want the date?
Q. During the term of your employment?
A. I often saw General Pitchlynn—very often. I never came to Washington that I did not see Pitchlynn, and we talked
95 about Indian business; but that I consulted with him or advised with him to do this, that, or the other, I cannot say. But he knew that I was engaged in the business, I have no more doubt than that I am talking to you now.
Q. Did you know that Governor Pitchlynn was at the head of that delegation that negotiated the treaty of '65?
A. I knew that he was in the previous delegation.
Q. Do you know who the others were?
A. No, sir; I do not.
Q. Israel Folsom and others?
A. I cannot recollect.
Q. If you did consult with what was known as the old delegation, Pitchlynn was the only one of that old delegation with whom you consulted, was he not?
A. My impression is that one of the Folsoms had some talk with me, but it is too vague for me to give you any opinion about it.

Redirect examination by Mr. TOTTEN:

WITNESS: After Cochrane's death there was a difficulty with Mr. McPherson, and without coming to a quarrel or angry terms, it seems to me that he doubted my employment by the nation or being authorized by the Indians. And that difficulty seemed to be removed prior to his signing the paper which he and I signed together, but it seemed to me that McPherson's coolness in this instance grew out of his doubting my authority.
Q. To represent the Choctaw nation?
A. Yes, sir, and represent them in this connection. When he became satisfied that I did, he and Black both agreed to consider me as a representative. That is my impression, and Mr. McPherson undoubtedly can tell you all about that.

JNO. H. B. LATROBE.

Subscribed and sworn to before me this 24th day of May, 1889.
MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until the 30th day of May, A. D. 1889.
MASON N. RICHARDSON, *Examiner.*

The witness says:

On going over his answers to the preceding questions in which he states that the agreement with Cochrane in regard to the net proceeds was in writing, he is satisfied that he was mistaken. The recollection of the witness, now that he recalls the circumstances under which the agreement was made and which now present themselves distinctly to his memory, is that Mr. Cooper, Mr. Cochrane, and witness were present in a room at Willard's hotel in

Washington, after witness had completed his work on the the treaty of 1866, when Mr. Cochrane spoke of the net-proceeds claim and said that he wanted witness to aid him in the prosecution of it, then witness agreed to aid him, and that this was in a verbal conversation, not reduced to writing.

JNO. H. B. LATROBE.

96 Subscribed and sworn to before me this 24 day of June, 1889.

MASON N. RICHARDSON,
Examiner in Chancery.

WASHINGTON, D. C., *May* 30, 1889—10 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. Reginald Fendal[1] for Mr. John H. B. Latrobe; also present, the examiner, Mason N. Richardson.

Whereupon the further taking of testimony in this cause was adjourned subject to notice.

MASON N. RICHARDSON, *Examiner.*

DISTRICT OF COLUMBIA, *To wit:*

I, Mason N. Richardson, an examiner in chancery, do hereby certify that the within deposition of John H. B. Latrobe was by me duly taken down in short-hand from the oral statement of the said witness herein named, in the city of Washington, District of Columbia, at the times and places within stated.

I further certify that after taking down said deposition in short-hand it was by me transcribed and reduced to typewritten print, and was then by me read over to the said witness who, in my presence, subscribed and signed the same.

I further certify that the said witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties in this suit, nor interested in the issue thereof in anywise.

I further certify that my fee of $—— has been paid.

MASON N. RICHARDSON,
Examiner in Chancery.

97 Filed Nov. 14, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court, this 14th Day of November, A. D. 1889.

JOHN H. B. LATROBE, Compl't,
v.
HENRY E. MCKEE *et als.*, Def'ts. } No. 11248. Eq.

Ordered that the complainant have thirty days from this date in which to take his evidence, the def'ts have ten days thereafter in

which to take their evidence, and the complainant ten days thereafter in which to take his evidence in rebuttal.

W. S. COX, *J.*

98 Filed Dec. 11, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court, the 11th Day of December, A. D. 1889.

JOHN H. B. LATROBE *vs.* HENRY E. McKEE *et al.* } No. 11248. Eq.

Ordered that the time within which the complainant shall take his evidence in support of his bill be, and the same hereby is, extended thirty days from this day.

W. S. COX, *J.*

99 Filed Dec. 12, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, this 12th Day of December, A. D. 1889.

JOHN H. B. LATROBE *vs.* HENRY E. McKEE *et als.* } Equity. No. 11248, Doc. 28.

And now comes the defendant Henry E. McKee, by his solicitors, and moves the court as follows:

1st. To vacate, set aside, and rescind the order made herein on the 11th day of December, 1889, which order extended the time in which the complainant shall complete his testimony in said cause for thirty days from said 11th day of December, 1889.

2nd. To dismiss the complainant's bill.

This motion is based upon the decree of this court made and entered in equity cause No. 11262 on the 1st day of October, 1889, and affirmed by the court in general term on the 4th day of December, 1889, and upon the pleadings and records in said equity cause No. 11262 and upon the pleadings, papers, and records in this cause.

JOHN J. WEED,
B. F. RICE &
M. W. CHOLLAR,
Solicitors for Def't McKee.

99½ To Messrs. Reginald Fendall & Enoch Totten, solicitors for complainant:

You are hereby notified that on Monday, the 16th day of December, 1889, at the opening of the equity court on that day or as soon

thereafter as counsel can be heard for that purpose, we shall request the court to hear and decide the above motion.

JOHN J. WEED,
B. F. RICE &
M. W. CHOLLAR,
Solicitors for Def't McKee.

Service acknowledged.

REGINALD FENDALL,
Sol. for Latrobe.

100–141 Filed Dec. 17, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court, the 17th Day of December, A. D. 1889.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.* } No. 11248. Equity.

The motions filed by the defendant Henry E. McKee on the 12th day of December, 1889, to vacate, set aside, and rescind the order made herein on the 11th day of December, 1889, extending the time in which the complainant shall complete his testimony, and to dismiss the complainant's bill, coming on to be heard and having been argued by counsel for the respective parties and duly considered by the court, it is therefor- by the court adjudged, ordered, and decreed that both of said motions be, and they are hereby, overruled with costs.

W. S. COX, *J.*

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142 Filed Feb. 20, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.* } Eq. No. 11248.

On motion of Mr. Henkle, counsel for the defendant Ellen Cochrane, it is, this 20th day of February, 1890, ordered that William S. Moore, Esq., of St. Paul, Minnesota, be appointed an examiner of this court to take the testimony of Henry E. McKee, a witness in behalf of the said Ellen Cochrane in this cause, which testimony shall be taken upon interrogatories filed by the said Ellen Cochrane, and the other parties in this cause may cross-examine said witness orally. The examination of said witness shall be held at the office of the said examiner, No. 33 Wilder block, in the city of St. Paul, Minnesota, on the 3rd day of March, 1890, instant, between the hours of 10 o'clock a. m. and 4 o'clock p. m., and may be adjourned from day to day until said testimony is completed.

W. S. COX, *J.*

143–301 Filed Mar. 1, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et al.* } Equity. No. 11248, Doc. 28.

On the application of the counsel for complainant in the above cause to extend the time for the cross-examination of the defendant Henry E. McKee, as fixed in the order heretofore granted in this cause, for the 3rd day of March, 1890, before W. S. Moore, at St. Paul, Minnesota, it is this 1st day of March, 1890, ordered that the time for counsel for the plaintiff in this cause to commence the oral cross-examination of the said McKee be, and the same hereby is, extended to and during March 8th, 1890, and that such cross-examination, if commenced, may continue until finished, provided the same shall be concluded on or before the 12th of said month.

W. S. COX, *J.*

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302 Filed May 9, 1890. R. J. Meigs. clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } Equity. No. 11248.

Upon the application of Reginal[d] Fendall, Esq., and Enoch Totten, Esq., and in pursuance of an order of court heretofore passed in the above-entitled cause, I have appointed Saturday, the 5th day of April, and the hour of 10.30 a. m., as the time, and the office of John H. B. Latrobe, Esq., on St. Paul and Lexington streets, being No. —, in the city of Baltimore, Md., as the place, and from day to day thereafter, for the taking of testimony for and on behalf of John H. B. Latrobe, Esq., in rebuttal, in the above-entitled cause.

MASON N. RICHARDSON, *Examiner.*

BALTIMORE, *April 5th*, 1890—10.30 o'clock *p.* m.

Met pursuant to notice and an order of the court herein passed, at the office of John H. B. Latrobe, Esq., St. Paul and Lexington streets, Baltimore, Md., to take testimony for and on behalf of John H. B. Latrobe, Esq., in rebuttal.

Present: Enoch Totten, Esq., and Reginal[d] Fendall, Esq., for and on behalf of John H. B. Latrobe; also present, B. F. Rice, Esq., for and on behalf of Henry E. McHee; also present the examiner, Mr. Mason N. Richardson, and the witness, John H. B. Latrobe, Esq.

Whereupon JOHN H. B. LATROBE, a witness heretofore sworn in this cause, testifies as follows, in response to questions by Mr. TOTTEN:

303 Q. You have been sworn in this case and examined before?

A. Yes, sir.

Q. Mr. Latrobe, I think, on your first examination in this case, you were unable to fix the dates that you ceased to be very active in the case, in the net-proceeds claim?

A. Yes, sir; I could not fix the dates.

Q. Mr. McPherson, who has testified in this controversy, has said that you continued to take an active part in it up as late as 1876; what is your recollection upon this subject; did your services extend as late as that—your active services?

A. I could not have fixed the date at all, if my attention had not been called to a visit paid to Mr. Doolittle with Peter Pitchlynn, who was then my active man in this matter. And that fixed the date March 4th, 1869. That I have a most clear and distinct recollection of, and after that for years afterwards, for several years afterwards, I considered that the net-proceeds claim was in my charge.

Q. You really had management of the case as councellor?

A. Well, I considered that I acted in the case as counsel.

Q. In reference to your interview with Senator Doolittle or ex-Senator Doolittle, what have you to say about the details of that. With whom did you go to see Mr. Doolittle, and for what purpose?

A. Mr. Peter Pitchlynn seemed to think because Mr. Doolittle had been in the Senate, when the case came before that body, he knew a great deal about it, and his being no longer in the Senate, removed any objection to our applying to him, and that as he was a man of character and standing and ability and he was a proper one to be employed, and Mr. Pitchlynn and I went accordingly.

Q. Did you go at Mr. Pitchlynn's request, or did he go at yours?

A. My impression is that he carried me to see him.

Q. You mean Mr. Peter P. Pitchlynn, the chief of the Choctaw nation?

A. Yes, sir.

Q. The visit to Senator Doolittle on that subject and for that purpose, took place after Mr. Doolittle's term as senator expired?

A. It was after it. All that I could say is, that it was after.

Q. Was it very long afterwards, or was it only a short time. I only want your general view about that—your best recollection?

A. All I can say with reference to the date of that interview was that it took place after Mr. Doolittle left the Senate, whether one week, or two weeks, I cannot say. I do not think it could have been long after Mr. Doolittle left the Senate.

Q. Can you state with any degree of accuracy as to how long your work in conjunction with Mr. Pitchlynn in this business continued?

A. I could not name the number of days, nor the frequency of the interviews, but I know at that time I considered that *in* whatever was necessary to be done in the net-proceeds claim, they had a right to call upon me; and Mr. Pitchlynn was the proper agent to represent the Choctaw nation.

Q. As a matter of fact, did he do so?

304 A. That is my conviction. That was my conviction at the time.

Q. There has been an effort made in the course of the examination *in* the witnesses in this case to show that you as counsel in the net-proceeds claim was not recognized by the old delegation, and the new delegation, but only by the new delegation. What do you say about that?

A. I can only give you my conviction. From all that I knew at the time, the two delegations were working with one object in view, and in good feeling, together.

Q. That continued up as long as you were actively engaged in the prosecution of that claim, did it?

A. That was my impression during the whole of that time. I knew no difference between the two.

Q. Did they consult with you on both sides—both of them?

A. I recall Mr. Pitchlynn as the only person whom I can identify as having conversed with me on this subject—on the net-proceeds claim.

Mr. RICE: This testimony is objected to as immaterial, and incompetent and immaterial.

WITNESS: I think that on my former examination I said that I could not fix how often I had seen any other parties, or if I had ever seen them.

Q. The two delegations, you think, so far as you can remember, worked in harmony together?

A. I had no other impression at the time.

M. N. R.

Q. Allen Wright was the head of the new delegation, was he not?

A. He was then the principal chief. He was head of the new delegation, as a matter of course.

Q. I ask you who was the head of the old delegation?

A. I understood Mr. Pitchlynn was. I never had any other impression.

Q. Did you have any acquaintance with either of the Folsoms?

A. As I said upon the former examinations, I may have seen them, and may have conversed with them, but I cannot identify the place or the time.

Q. Do you remember of writing an address or a statement which was subsequently printed and signed by Peter Pitchlynn?

A. An address was shown me by Mr. Fendall, signed Peter Pitchlynn, relating to the net-proceeds claim, and without being able to fix the time or the place, yet the paper itself satisfies me that I was the author of it.

Q. Can you remember about when that paper was so prepared and presented?

A. I do not fix the date.

Q. Can you say it was as early as 1869 or as late as 1871?

A. I do not know. I could not say.

Q. You could not fix that date?

A. I could not state the fact; but I have a conviction that
305 the paper was prepared by me which Mr. Pitchlynn signed, and I believe that paper is the one. It was the paper shown me by Mr. Fendall, and I have not seen it since.

Q. Do you remember anything about a mandamus proceeding which took place in the court in the District of Columbia some time in November, 1861, which was instituted by Mr. Corwine?

A. I recollect Mr. Corwine, and I recollect he was connected with the case; but that is the extent of my recollection.

Q. I notice in a letter which was written by you to Mr. McPherson that you say something about desiring a little time in order to prepare an answer on behalf of the Choctaw nation. Does that recall to your mind anything?

A. That letter was written by my son Ferdinand. I was sick at the time, and was unable to write. He acted as my amanuensis, and wrote that letter.

Q. At your dictation?

A. Yes, sir.

Q. I see that you write something in here, something about getting time in order to interplead in behalf of the Choctaw nation. Can you state whether you ever did that or not?

A. I could not fix the date of any action that I did in consequence of it, but I take it for granted that I did intervene, because, when I got well, I did the work that I was prevented from doing when I was sick.

Q. This letter which I have just shown you bears date November 6, 1871. Does that refresh your recollection as to the degree of activity which you were then maintaining in the affairs of the Choctaw nation?

A. Well, it was not necessary to refer to that letter to satisfy me that at this date, before, and after, I considered myself engaged in behalf of the Choctaw nation.

Q. I now show you, Mr. Latrobe, a letter signed by you—a letter-press copy of a letter signed by you, which copy we have torn out of your letter-press copy book, and which letter bears date Jan. 21, 1870, and is addressed to Gen'l Peter P. Pitchlynn, which I now show you, and ask you if you recollect that letter, and if it is in your handwriting?

A. 1870?

Q. Yes, sir.

A. Oh, yes, sir; certainly that is in my handwriting, and the letter was written by me, and as of its date there is no doubt about it in my own mind then. I then regarded the net-proceeds claim as one of the most important pieces of business on my hands. There is no doubt about it, sir.

Q. And does this refresh your recollection as to your relations, and working in conjunction with Mr. Pitchlynn?

A. Mr. Pitchlynn I regarded as the leading man, and the brightest and the most intelligent of the gentlemen that came along with that delegation, undoubtedly.

306 Mr. TOTTEN: I offer this letter in evidence, and the examiner will please mark it Exhibit No. F.

Mr. RICE: I object to it as being incompetent, immaterial, and irrelevant,

Q. I now show you a letter-press copy book, and ask you whose it is?

A. That is my letter-press copy book.

Q. I now show you a letter, or rather a letter-press copy of the letter, dated Feb'y 2nd, 1871, which is addressed to Chas. E. Mix, Washington, D. C., and signed by you, and which purports to enclose another letter, and I now show you another letter which immediately precedes this one, and I ask you if you remember the circumstances of writing those two letters and of transmitting them to Mix and Co.? The enclosed letter is addressed to Mr. Bryant, a member of the Coctaw nation?

Mr. RICE: That is objected to as being incompetent and immaterial.

WITNESS: This letter was addressed by me to the principal chief of the Choctaw nation, as there stated, and that I am willing to swear.

Q. What did you do with it?

A. I sent it in a letter to Mix and Co., that they might see the correspondence.

Q. This C. E. Mix and Co. was a firm doing business in Washington as general agents, and was composed of what members; do you remember?

A. Douglass H. Cooper and Charles E. Mix.

Q. Were they co-operating with you all through?

A. All through.

Q. And ought to be compensated out of what you get?

A. Of what I get. That is explained in my previous examination, and I was asked why I choose to give away what did not belong to me.

Q. You have not got the original of these two letters, have you?

A. The letters would go to the party to whom they were addressed.

Q. You know nothing about the whereabouts of the original?

A. They were not sent back.

Mr. TOTTEN (to the examiner): This letter to Mr. Bryant, principal chief of the Choctaw nation, begins on page 51 of this letter book. The letter of transmission to Mix and Co. is dated Feb'y 2nd, 1871. I offer them both in evidence, and the examiner will please mark them as Exhibit No. —.

Mr. RICE: They are objected to as incompetent, irrelevant, and immaterial.

Mr. TOTTEN: I offer in evidence a printed memorial, which was referred to by Mr. Latrobe just now as having been written by him, and signed by Peter Pitchlynn, and to the best of his knowledge written by him, and the examiner will please mark it as Exhibit G.

Mr. RICE: Objected to for the reason that the fact of the writing is not sufficiently established, and otherwise immaterial and incompetent.

Mr. TOTTEN: I offer in evidence the following letters-press
307 copies of letters, in the letter-press book of John H. B. Latrobe, Esq., before referred to, to wit, Exhibits Nos. H.

Mr. RICE: I object to them for the same reason as last assigned.

It is agreed that copies of the said letter-press copies may be filed subject to the above objection on the part of Mr. Rice.

EXHIBIT M. N. R. No. "F."

FEB'Y 2, 1871.

C. E. Mix & Co., Washington, D. C.

GENT-: I have your several letters since my last, and have been excessively engrossed, I may say, day and night. I send you now my letter to Mr. Bryant, pr. chief, and you will find in it a blank that please fill and forward. I have also a letter from McPherson, suggesting that y'r Gen'l Cooper, he, and I should have a meeting. See him, fix a time when Gen'l C. can come up, and I will be on the spot to attend.

Most truly, JNO. H. B. LATROBE.

P. S.—I note contents of yours of yesterday, and judge that the fat is in the fire all round. I will write my position to Governor Swann.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

EXHIBIT M. N. R. "G." A true copy. Test: Mason N. Richardson, examiner.

Copy.

BALTO., *Jan'y 30th*, '71.

To the Honorable William Bryant, principal chief of the Choctaw nation.

SIR: Certain action which has become necessary in my judgment, looking to the interests of the Choctaw nation, requires from me a few words of explanation.

You are aware that the council of the nation determined that the prosecution of the net-proceeds claim should take precedence of all other matters before the Government, in consequence of which the claim for the bonds directed to be issued under the act of Congress appropriating $500,000 on account of the net-proceeds claim, and the prosecution of which devolved on me under my agreement with the delegation of 1866, was allowed to rest, and the influence of myself and friends was exerted to promote the success of the net-proceeds claim before the Senate; why there was a failure here it is unnecessary to discuss now.

There were those who attributed it to what was deemed, at the time, the injudicious presentation of the bond matter.

In due season this would have been urged by me under the article, having it especially in view, of the treaty, which I had the honor to negotiate on behalf of the nation in 1866.

The bond claim, however, has again been brought forward in advance of the net-proceeds claim, whether judiciously this time or not, remains yet to be seen, and certain parties have been the
308 means of obtaining an opinion from the Attorney General to the effect that the treaty of 1866, operating a repeal of the act which confiscated the bonds in 1865, the Secretary of the Treasury was at liberty to issue them without any action on the part of Congress.

Unwilling to act upon this opinion, the Secretary referred the matter to Congress, when the Senate determined that no legislation was necessary to authorize the delivery of the bonds. This view has not yet been taken by the House of Representatives, where the matter now hangs; and where it is deeply to be regretted that questions have been suggested that may peril the early success at all events of other matters in which the Choctaw nation is greatly interested.

Without going into particulars, information which I received led me to believe that if the bonds were delivered it would be under the impression on the part of the authorities in Washington that they came under the net-proceeds claim. This, however, was clearly not the case. They came within the authority given to me by the delegation of 1866, to attend to the recovery of back annuities and money due prior to June, 1866, under acts of legislation, as will appear by reference to documents on file in the office of the national secretary.

Holding it to be my duty to see that the interests of the Choctaws were not jeoparded in any manner, I notified the Secretary of the Treasury that I was the party authorized to represent them in this behalf and begged that nothing might be done in the matter without my consent.

Should the prosecution of the bonds claim at this time, happily, not prejudice it, the interest will be paid in gold when the bonds are delivered, and it is understood that, in this event, the whole of the interest has been agreed to be paid to the parties who have now been moving in the business. A rough calculation, including the premium on gold, and the premium also on the bonds, makes the whole interest of the Choctaws at this time in this connection equal in value to about $425,000; and it seems to me that it does not become me as the agent of the nation to permit such a state of things to exist without advising you of it.

It is so important that there should be no difference between the parties representing Indian interests here, that I addressed a note to General Pitchlynn who is said to be active in this matter inviting a conference. Of this no notice has been taken, and it only remains for me to communicate to you the facts.

I enclose a copy of notice to the Secretary. I also enclose a

printed copy of a memorial in the net-proceeds business, which has been prepared with much care and which was deemed necessary to correct the misrepresentations which, year after year, have been current in this regard. All the facts have been set forth, and when the nation is assailed, the friends of the nation have material to urge in its defences.

I have the honor to be your ob'd't serv't,

JNO. H. B. LATROBE.

EXHIBIT M. N. R. F.

Gen. Peter P. Pitchlynn, Esq.

DEAR SIR: I hoped to have seen you in Washington yes-
309 terday. I got your card, but knew not where to return your visit, and the office of C. E. Mix & Co. was closed before I could get there late in the afternoon. I had the proofs with me which I now send for your inspection and that of our friends.

It is intended to give the key-note to the present application. I want you to go carefully over it. I could not make it shorter. Criticize it at your pleasure. I want Mr. McPherson to see it. I will send it to him after you return it to me. All parties must now pull together, and all should agree about the ropes to pull at. It will be a few days before the printing is finally done with, but a few days will be profitable if we can get all parties to agree as to the result of it.

Most truly, JNO. H. B. LATROBE.

Jan'y 21, 1870.

A true copy.
Test: MASON N. RICHARDSON, *Examiner.*

Cross-examination by Mr. RICE:

Q. Who was working with you in regard to this net-proceeds claim in 1868 and 1869?

A. Douglass H. Cooper and Charles E. Mix.

Q. No one else?

A. No, sir; not employed by me. There was no one else employed by me.

Q. Well, was there any one else working, to your knowledge, in connection with you, not employed by you?

A. I knew none but those two.

Q. Where were your services engaged by Allen Wright and his delegation?

A. Well, you will find all that stated in my examination in this case, the history of my connection with it in the year 1865, and thereabout, prior to the negotiation of the treaty of 1866. It is all stated there at length.

Q. When and how often, after 1869, were you in consultation with Peter Pitchlynn?

A. I could not say. My belief is that, for several years after, I

regarded Mr. Pitchlynn as the active man, and I spoke to him whenever anything was to be done. I felt myself bound to do it at his instance.

Q. Did you know anything, during the time you were connected with the case, of the operations of Ward H. Lamon?

A. No, sir; I have only heard the name familiarly as the writer of some biography or other.

Q. That is all the knowledge that you have of him in connection with this case?

A. That is my knowledge of him at all.

Q. Did Jeremiah S. Black operate with you in 1869 and 1868?

A. Jeremiah S. Black represented the interests, as I understood it, of Mr. Tom Scott, and with him I had a conversation and intercourse, some intercourse, which is also stated in my examination—in my former examination.

310 Q. Did he at that time represent the Choctaws, as you understood it?

A. I could not say who he represented; he did not tell me; I only knew that he was antagonizing me.

Q. He was antagonizing you?

A. He was antagonizing me at the time; not antagonizing the Choctaws, but the claim for the compensation.

Q. You knew him then in the claim for compensation, but not in anything he was doing in the case?

A. I had no knowledge of what he was doing.

Q. Did you ever know Chauncey Black in connection with the case?

A. I never saw him in my life, and I do not know him.

Q. Mr. McPherson, in his testimony, says the two delegations were inimical to each other, that Pitchlynn did not recognize the Allen Wright delegation, so far as the net-proceeds claim was concerned?

A. I know nothing of what he has stated.

Q. How is the fact about that?

A. I do not know anything about it; I always regarded them as working in the net-proceeds claim harmoniously.

Q. Was there any written contract between the two delegations and you and between them?

A. No, sir.

Q. No such contract of that kind?

A. I never saw any.

Q. Did you have any direct employment in the nature of a bargain with Peter Pitchlynn?

A. No further than I regarded him as the leading man among my clients, and I obeyed his instructions, and I would have followed his instructions simply as my client.

Q. Did you have any bargain with him in regard to the fee in the case, or were you working under the Cochrane contract?

A. I considered Mr. Pitchlynn as representing the net-proceeds claim. I considered myself employed to prosecute it, and whenever he and I got upon the subject there would be accord between us.

Q. Were you employed by him; that is what I want to know?

A. It depends what you call employment. If you asked me if there was any written contract I would say there was not.

Q. Was there any verbal contract for a stipulated fee?

A. Only such as might have been inferred from the fact that when the net-proceeds claim was involved he consulted with me as the party who was to represent them.

Q. Who was the company of Charles E. Mix & Co.?

A. I just now stated.

Q. It was——

A. Douglass H. Cooper and Charles E. Mix.

Q. After 1869, or about 1870, I believe, I understand you to say in your original deposition that you ceased to be active in the matter?

A. My deposition will speak for itself.

311 Q. If it is there that is the correct statement, is it?

A. Whatever is there is correct.

Q. In the early part of 1870, what was the relation between you and Douglas[s] H. Cooper?

A. Friendly up to the date of his death.

Q. Business relations are what I am speaking of?

A. Well, he owed me some money that I had advanced to him whenever it was necessary, and he paid me, if that is of any interest to you. I can give you a copy of the account.

Q. I am after knowing whether you were working with him on this net-proceeds claim in the early part of 1870?

A. I never knew that he worked in any other way than in relation to the net-proceeds claim.

Q. If he had a contract in 1870 with the delegation of the Choctaw nation, do you know anything about it, if he had any contract of his own?

A. That is very vague.

Q. In his own name; any contract in his own name with the Choctaw delegation?

A. I am not aware of it—you mean in connection with the net-proceeds claim?

Q. Yes, sir; in regard to the net-proceeds claim?

A. I am not aware of it.

Q. I am not asking you any question about anything else. Did you state in your original examination, in regard to your connection with the Cochrane contract?

A. I would refer to the examination. You will find there what I stated.

Q. You adhere to whatever those statements were?

A. I suppose that I intended at the time to speak the truth.

Redirect examination by Mr. TOTTEN:

Q. Mr. Rice has been asking you something about your contract in reference to your services touching the net-proceeds claim. As I recall your first deposition it referred to the Cochrane contract as

being in existence when you began your services upon the net-proceeds claim. The Cochrane contract was then in existence?

A. Undoubtedly. I always understood that Mr. Cochrane was to get thirty per cent.

Q. And for his connection with the net-proceeds claim?

A. Yes, sir; but I expected to get a portion of it for the services that I rendered in prosecuting the net-proceeds claim.

Q. Was that in pursuance of an agreement with Cochrane or with some other person?

A. That was in pursuance with an understanding with Mr. Cochrane.

Q. Was that submitted to the Choctaw nation?

A. That I cannot tell you.

Q. The services which you rendered in the net-proceeds claim, in connection with Pitchlynn and others was in pursuance of the arrangement between you and Cochrane, is that the idea?

312 A. That was the idea.

Q. Can you state—I have forgotten whether you stated what the percentage of this thirty per cent. was that you were to have?

A. That is already stated.

Q. That is already stated in your other examination, in your her deposition?

A. Yes, sir; it is. It is all stated there.

Q. The matter has been brought back to your recollection as freshly as possible when you testified the last time, is that the idea?

A. Yes, sir. My impression at first was. I think I afterwards corrected it, that there was a contract, a written contract. Afterwards I think I stated that it was an understanding between us, and not a written contract. I think I made that correction after my examination.

Q. After this arrangement and understanding, did you and Cochrane work in conjunction about the net-proceeds business?

A. Well, the difficulty is to define "in conjunction," what you mean by that. I was willing to do whatever was necessary for counsel to do in the prosecution of the net-proceeds claim, and I consulted with Mr. Cochrane from time to time upon the knowledge that he had previously acquired.

Q. You consulted and acted with him as you did with Pitchlynn?

A. Just as I did with Pitchlynn. If I had met with Mr. Pitchlynn on any occasion I would have talked with him on the net-proceeds claim.

Q. After the death of Cochrane did your relations in connection with Mr. Pitchlynn and the net-proceeds claim continue on in the same way?

A. I could not tell you at all. I cannot recollect.

Q. Mr. McPherson was the executor of Cochrane?

A. He was the executor of Mr. Cochrane.

Q. He came in then as far as he could represent Mr. Cochrane's estate?

A. So I understood he did.

Q. You had a great deal of connection with him?

A. Oh, yes, sir; and then an agreement was made with him. Mr. McPherson was under the impression apparently at one time that I was not authorized by the Indians, the two delegations, the old and the new, that would bind him to any agreement. Finally he became satisfied that I was authorized by the Indians.

Q. Both the old and the new delegation?

A. That was my understanding. I never drew any distinction between the old and the new delegation in my relations to the claim.

Q. It was all the Choctaw nation with you?

A. Yes, sir; and whenever a lawyer was called upon to act, I wa called upon to act, and the whole record will show what I did to th present day.

Q. Can you remember of going from time to time to Georgetown, and to the office of Mix & Co. in the city of Washington, for the purpose of consulting with them and also with Mr. Pitchlynn?

Mr. RICE: Objected to.

313 WITNESS: You know the difficulty of asking a man if he recollects something. You want to fix the time, and then you want to fix the place, and then you want the circumstances as far as you can. All I can say in a general way is that whenever Pitchlynn and I met we talked upon that subject, but how oft and when it was I cannot say. So it was with McPherson. I we to McPherson's house in Georgetown to see him in this connection and whenever I went to Washington, and it was very often.

Q. You remember that you visited McPherson at his residence, in Georgetown, on this subject?

A. I went to Georgetown to see him, and it was a long journey to see him, too.

Q. Can you remember where you most usually saw Pitchlynn?

A. I would meet Pitchlynn on the avenue. I would see him there.

Q. Were you a frequent visitor to the office of Mix & Co.?

A. I never came to Washington without going there.

Q. Do you remember, as a matter of fact, that you met Pitchlynn there?

A. I may have met him, and I may not have met him, there. If I had met him, I should say that he was there in the net-proceeds business, and I was there for the same purpose.

Q. I believe you stated your age in the beginning of the original deposition?

A. Yes, sir; I will be eighty-seven years of age on the 4th day of May.

Recross-examination by Mr. RICE:

Q. Did you have any consultation from the time that you were engaged in this matter, 1866, until afterwards, with Jeremiah S. Black, in regards to the prosecution of the net-proceeds claim?

A. Never. But afterwards, when this net-proceeds claim was in

Congress, I would meet Judge Black in the Supreme Court when the trial of cases in which I was interested took place, and he would ask me, "Well, how is the net-proceeds-getting on?" That would be all that would ever take place.

Q. Did he assume in conversations with you at any time to be engaged in that prosecution?

A. No, not necessarily, because his question would be to me independent of his own application.

JNO. H. B. LATROBE.

Subscribed and sworn to before me this 1 day of May, A. D. 1890.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until Monday, April 7th, at the hour of 3 o'clock p. m., at the office of Enoch Totten, Esq., in the city of Washington, District of Columbia, at the Columbia Law School building.

MASON N. RICHARDSON, *Examiner.*

314 EXHIBIT M. N. R. "H."

(Letter-press book, p. 7.)

To Douglas H. Cooper.

MY DEAR GENERAL: * * * In my letter about postponement I suggested Chollar's being sent for, and in a way that was about right. Perhaps I may be able to put the matter stronger in a reply to the Secretary's letter advising me that time will be given. I will see. I have seen Mr. McPherson and talked net-proceeds with him, but have arranged no battle. I learn from him that the parties on that side were in so deep they must work, and ever since our compromise for the $75,000 I have felt that we were the second fiddle in the orchestra, and therefore have been quite willing to let others take the lead. And, again, my dear general, as I have told you an hundred times, these things at Washington in what professional men are to help who have other business on hand need a head on the spot, and you, as I have said an hundred other times, are that head exactly, and all hands of us have been awaiting your coming. * * *

Truly, JNO. H. B. LATROBE.

Dec. 31, 1868.

(153.)

Gen. Cooper.

MY DEAR DOUGLASS: * * * I send by express a batch of your papers that you should have. They were given to me for Pitchlynn's letter. * * *

Most truly, JNO. H. B. LATROBE.

M'ch 14, 1870.

(P. 403.)

OCTOBER 17, '70.

D. H. Cooper, Esq.

MY DEAR GENERAL: I have the report which is to be the foundation of the memorial of Choctaws and will have the latter all ready suitably salted with something appetizing for Congress. * * *

Most truly, JNO. H. B. LATROBE.

(P. 454.)

MY DEAR DOUGLASS: * * * Will by next mail or soon after send the Choctaw memorial and protest against interferring with my agency for the Choctaws. * * *

Truly yours, JNO. H. B. LATROBE.

Dec. 16, 1870.

(17.) (Postscript to a letter written to Gen. Cooper, dated Dec. 27, 1870.)

P. S. to C. E. Mix & Co.:

The memorial goes down to-night. I wrote you at length on Saturday. I enclose you a letter from McPherson which will
315 take me to Washington to-morrow or next day. There is clearly more in the wind than I have known, but I have relied & still rely on McP.'s good faith.

Most truly, JOHN H. B. LATROBE.

I write McP. by this mail.

(P. 195.)

D. H. Cooper, Esq.

DEAR GENERAL: * * * Send you the Choctaw reply to solicitor. Hope you will like it. I do.

Truly, JNO. H. B. LATROBE.

May 5, 1871.

The argument is written in copying ink to save you trouble.

(P. 217.)

MY DEAR GENERAL: Glad to hear your news from Choctaw nation. I send report to principal chief, council, and nation as you suggest. I also send letter to Mr. Smith. I also send letter to McPherson. * * *

Most truly, JNO. H. B. LATROBE.

May 20, 1871.

Letter to nation and Smith are in copying ink.

(P. 236.)

MY DEAR DOUGLASS: I enclose my check for $500 as my contribution in the matter of your expenses to the Choctaws. McPherson

for Cochrane's estate giving the same, and you the same in your risk and labors in going out. * * *

(P. 436.)

D. H. Cooper, Esq.

MY DEAR GENERAL: I have yours of the 20th inst., and at the same time I have Mr. Mix, who comes up from Washington to see me with a message of the pr. chief of the Choctaws and a report of P. P. P. on which you have made marginal notes. * * *

Most truly, JNO. H. B. LATROBE.

I will see McPherson about the compromise as you suggest.

November 2, 1871.

(P. 136.)

D. H. Cooper, Esq.

MY DEAR GENERAL: * * * I have done a good deal of work for the Choctaws, and all that seems to be coming to me is Senator Harlan's praise of my presentation of the Choctaw net-proceeds claim. I would gladly confer with Mr. McPherson for any good to come of it, and if anything is to be gained, in your opinion, by the conference, will visit Washington for the express purpose.
316 If the Cochrane contract is carried out, and the Cochrane estate get their money, I am to receive $75,000 of it. * * *

Faithfully, JNO. H. B. LATROBE.

Mar. 26, 1872.

(P. 286.)

Douglas H. Cooper, Esq.

MY DEAR GENERAL: * * * I write to McPherson to-day about the expenses to the Indian Territory, and shall be ready to unite with him to the same extent as before.

Most truly, JNO. H. B. LATROBE.

June 29, 1872.

(P. 389.)

(OCT., 1872.)

Gen. D. H. Cooper, Boggy Depot.

MY DEAR GENERAL: * * * I have been to Washington and called on McPherson and explained matters at length, urging the importance of the action of the Choctaw legislature, and the necessity of sending you means; he fully agreed to all I said and promised at once to address the persons whose interests came through him urging them to do what was needful. * * *

Most truly, JNO. H. B. LATROBE.

(P. 426.)

Gen'l D. H. Cooper.

MY DEAR GENERAL: Thanks for your mem. of facts. Your telegram to York * * * that Judge Black was in Washington, so I went there yesterday, Friday, only to find he had gone South and would not be back till next week. As soon as I come back will see

him—I hope on Wednesday; I saw McPherson, who agrees that we had better have a third party to do the battling; but until I see Judge B. I cannot fix on anything.

Faithfully, JNO. H. B. LATROBE.

Dec. 7, 1872.

(440.)

MY DEAR GENERAL: * * * I shall get to Washington and see Black at the first moment I can spare, knowing him to be there.

Ever truly, JNO. H. B. LATROBE.

Dec. 16. '72.

(35.)

(JAN., 1870.)

Charles E. Mix & Co.

GENTLEMEN: * * * I am so busy in Baltimore that I do not know when I can get down to Washington; * * * but you have my views on paper as well as I could give them orally. Who
317 signs the memorial to the Committee on Judiciary, P. P. P.?
I hope Gen. Pitchlynn likes what I have written; say so to him from me.

Truly, J'N H. B. L.

(P. 43.)

JAN'Y 25, 1870.

Charles E. Mix & Co.

GENTLEMEN: * * * I am glad the reference to the Judiciary Committee has gone forward. * * *

Truly, J'N H. B. L.

(P. 49.)

JAN'Y 27, 1870.

C. E. Mix & Co.

GENTLEMEN: * * * I expect to be in Washington on Saturday on a consultation in a case to be tried here next week, and if Gen'l Pitchlynn will do me the favor to meet me at the station on the arrival of the train that leaves here at 2 p. m., say by 3.30, we can have the consultation with him before my other consultation begins. We can go in the cars to your office, or I can take him to another place if your office is shut, so we can anyhow find a place to talk in. * * *

Yours truly, J'N H. B. L.

(P. 68.)

BALTO., *Feb.* 5, 1870.

C. E. Mix & Co.

MY DEAR SIR: I sent by last night's mail the revise of the address on the Committee of the Judiciary of the Senate. * * *

J'N H. B. L.

(P. 332.)

BALTO., *July* 13, 1870.

Charles E. Mix & Co.

GENTLEMEN: * * * I ought most assuredly to know all about the net proceeds by this time; I certainly have written enough on the subject. I will have the memorial you suggest in readiness. * * *

Most truly, JNO. H. B. LATROBE.

(432.)

BALTO., *Nov.* 16, 1870.

C. E. Mix, Esq.

MY DEAR SIR: * * * I have the Choctaw memorial in readiness for the delegation when they come on. * * *

Most truly, JNO. H. B. LATROBE.

(P. 57.)

FEB. 2, 1871.

C. E. Mix & Co., Washington, D. C.

GENTLEMEN: * * * I have also a letter from McPher-
318 son suggesting that your Gen'l Cooper, he and I, should have a meeting. See him, fix the time when Gen'l C. can come up, and I will be on the spot to attend.

Most truly, JOHN H. B. LATROBE.

(P. 83.)

Charles E. Mix & Co.

GENTLEMEN: * * * Did you send my letter to the principal chief, Mr. Bryant? * * * How stands Indian affairs in which you are concerned? What is the condition of things in the H. of R., &c.? * * *

Most truly, JNO. H. B. LATROBE.

Feb'y 10, 1871.

What effect has the Choctaw memorial had? * * *

(118.)

C. E. Mix & Co.

MY DEAR GENERALS: * * * You have had my letter crossing your last by this time. I wrote to McPherson substantially answering yours as follows: "My dear sir, I have yours of the 17th, which I enclosed to Gen'l C., and a letter from him to me enclosing a similar letter from you to him, crossed mine on the way." I am in receipt of a letter from the General to-day. "It appears," he says, "that P. P. P. promises to pay McP. $75,000 out of the bonds under the Cochrane contract, and McP. admits it should be under your contract and that he will reserve it for you." * * *

Faithfully yours, JNO. H. B. LATROBE.

Feb. 24, 1871.

(309.)

Charles E. Mix, Esq.

MY DEAR SIR: * * * I shall be in Baltimore all this week, and will be glad to see you. Suppose you come to spend Wednesday, to-morrow, night, at Fairie Knowe. * * * I shall be glad to see Mr. Leflore on his way through Baltimore, which I shall not leave before Friday next.

Most truly, JNO. H. B. LATROBE.

July 18, 1871.

(422.)

BALTO., *Nov.* 6, 1871.

Chas. E. Mix & Co.

GENTLEMEN: * * * I send you a letter which I have written to the Secretary of the Treasury, which, if you approve, please have delivered, first showing it to Mr. McPherson.

Most truly yours, JNO. H. B. LATROBE.

319 (74.)

MY DEAR SIRS: * * * I expected to go to Washington, but was kept by a heavy case which I could not leave.

Most truly, JNO. H. B. LATROBE.

Charles E. Mix & Co.
M'ch 11, 1872.

(369.)

SEPT. 21, 1872.

Charles E. Mix, Esq.

MY DEAR SIR: * * * It is probable I will be in Washington on Tuesday, when I will have the pleasure of seeing you. If anything prevents I will write, altho' I must have a full talk with you about Indian matters. * * *

Most truly, JNO. H. B. LATROBE.

(18.)

Gen'l Peter P. Pitchlynn, Esq.

DEAR SIR: I hoped to have seen you in Washington yesterday. I got your card, but knew not where to return your visit, and the office of C. E. Mix & Co. was closed before I could get there late in the afternoon. I had the proofs with me which I now send for your inspection and that of our friends.

It is intended to give the key-note to the present application. I want you to go carefully over it. I could not make it shorter. Criticize it at your pleasure. I want Mr. McPherson to see it. I will send it to him after you return it to me. All parties must now pull together, and all should agree about the ropes to pull at. It will be a few days yet before the printing is finally done with, but a few days will be profitable if we can get all the parties to agree as the result of it.

Most truly, JNO. H. B. LATROBE.

Jan'y 21, 1870.

(P. 15.)

J. D. McPherson, Esq.

My Dear Sir: I have your note and *and* will try to be down in Washington to-morrow or next day. I wrote to Gen'l C. my views in full when I heard of the Attorney General's opinion, and refrained from protesting against any interference for the present. I have always relied on your good faith in this matter as on my own and still do so.

Truly, JNO. H. B. LATROBE.

Dec. 27, 1870.

(76.)

J. D. McPherson, Esq.

My Dear Sir: I have your note of the 31st ultimo, and at once wrote to Gen'l Cooper, and expecting to hear from you both,
320 or that you would be present both, rather, here, I did not answer at the instant as I should have done. I am still in expectation of seeing you on the subject of your communication.

Most truly, JNO. H. B. LATROBE.

Feb'y 7, 1871.

(100.)

J. D. McPherson, Esq.

My Dear Sir: I have yours of the 17th, which I enclose to Gen'l Cooper, and a letter from him to me, enclosing a similar notice from you to him, crossed mine and its enclosure on the way. I am in receipt of a letter from the General to-day. "It appears P. P. P. promises to pay Mr. McPherson $75,000 out of the bonds under the Cochrane contract, and Mr. McPherson admits that it should be under your contract, and that he will reserve it for you." * * *

Most truly, JNO. H. B. LATROBE.

(Feb. 21, 1871.)

(417.)

J. D. McPherson, Esq.

My Dear Sir: * * * I will in behalf of the Choctaws resist the motion of Mr. Corwine, but am not familiar enough with the practice to know how I shall intervene, &c. Can you advise me on this.

Most truly, JNO. H. B. LATROBE.

October 31, 1871.

(389.)

Balto., *Oct.* 16, 1872.

J. D. McPherson, Esq.

My Dear Sir: I have not heard from you since our conversation in your office about Indian affairs. I enclose a letter from Gen. Cooper. Looking to the interest of all parties in the matter he has in charge, does it not seem right to you that he should have the $500 he asks for, and can you not have it sent to him?

Most truly, JNO. H. B. LATROBE.

(Page 14, letter book.)

9TH AP'L, 1869.

DEAR SIR: * * * We expect a report from the Indian committee to the effect that the net-proceeds claim is an adjudicated one, and motion to refer it to the Committee on Claims for further examination and report at next session. This will be the strongest possible endorsement, and we feel assured of the friendly aid of the chm. of the Com. on Claims.

Yours truly, D. H. COOPER.

321 (15.)

WASHINGTON, *April* 10, 1869.

DEAR SIR: Mr. Harlan reported the Choctaw "net-proceeds" claim to the Senate as an adjudicated and an adjudicated one, and moved that the memorial of P. P. P., and others, with the accompanying papers, be printed and referred to the Committee on the Judiciary for examination and report. This seems a more appropriate reference than to send the papers to the Committee on Claims. It is equivalent to saying the matter is not a claim but an adjudicated account, but for greater certainty as to the legality of it, the matter is sent to the Committee on Judiciary, all lawyers. This will give you an opportunity of appearing before such a tribunal as will no doubt suit *to* best, and we get clear of "lobby sharks" and "shysters."

It shows progress, too, and will stop the mouths of those croakers who continually deafen the Choctaws with their ill-omened cries of "nothing done," in the "wrong hands," &c., &c. * * *

Yours truly, D. H. COOPER.

(20.)

AP'L 6, 1869—11 p. m.

Hon. J. H. B. Latrobe.

DEAR SIR: The "net proceeds" was not reported to-day, but we hope to get it done to-morrow, and tack it onto the deficiency bill reported by Mr. Fessenden to-day from the Committee on Appropriations, or else bring it in as a separate bill and try to push it thro'. * * * Our "reserve" will have a council at 9.30 o'clock to-morrow, and determine what can be done in the "net proceeds."

Yours truly, D. H. COOPER.

(30.)

31 MARCH, 1869.

DEAR SIR: * * * P. S.—Nothing new relative to "net proceeds." * * * Sent memorial up by old Peter. Not yet introduced. Don't understand why—will find out to-morrow where it has lodged.

(43.)

WASHINGTON, *March* 30, 1869.

DEAR SIR: By invitation I called on Mr. Harlan at the committee room last evening and had a free conference as to the "net proceeds," which he promised to thoroughly examine. He appeared friendly.

At his suggestion I have drawn up a memorial for the Choctaws, referring to your brief, Pitchlynn's memorial and supplemental statement, and Mr. Windom's report, together with other docs. on file relating to the claim, and praying they may be referred to the committee of the Senate and House with instructions to report by bill or otherwise, to the end that justice may be done. You
322 will be surprised to learn, as I was, that the "net-proceeds claim" is not and has not been before the committee at all this session. * * *

Yours truly, D. H. COOPER.

(65.)

WASHINGTON, 17*th March*, '69.

Hon. J. H. B. Latrobe.

DEAR SIR: I have yours enclosing McPherson's of yesterday. I had heard nothing from him about the Court of Claims lately. Some time ago he favored the new move. * * *

Truly, D. H. COOPER.

(70.)

Telegram.

WASHINGTON, D. C., 1869.

J. H. B. Latrobe, cor. Lexington, St. Paul.

Will be here to-day. You ought to see W., also.

D. H. COOPER,
No. 463 *E St., bet.* 5*th &* 6*th.*

87.

MARCH 3D, 1869.

DEAR SIR: The deficiency bill is before the Senate, and the House has non-'curred as to all the Senate's amendments to the Indian app't'n bill. I have sent memoranda to McPherson, and suggested that some one ought to see that the net proceeds are provided for either in the deficiency bill or by being placed by the committee of conference as an amendment to some one of the Senate's amendments, & recommend its passage. * * *

Yours, D. H. COOPER.

(112.)

WASHINGTON, 16 *Feb.*, 1869.

DEAR SIR: Mr. Wright succeeded in seeing Mr. Harland and Mr. Doolittle. They promised to do the best they could for the Choc-

taws. * * * Mr. Wright asked if you had gone, and when you would be back. I answered you would come whenever needed, and I hope your business is not such as to prevent your presence and counsel at this juncture. * * *

Yours truly, D. H. COOPER.

120.

FEB. 10, 1869.

Hon. J. H. B. Latrobe, Balto., Md.

DEAR SIR: I learn Mr. Harlan has been put on the Indian Committee of the Senate and will be chairman, vice Henderson,
323 and that the intention is to take up and dispose of all the treaties and other important Indian business.

I hope, therefore, you will be able to come over and stay a few days a week. Chief Wright of the Choctaw nation will be here to-night and you should see him without delay. * * * We must push up our Indian business. The net proceeds and the Cherokee treaty are the most important. * * *

Yours truly, D. H. COOPER.

133.

WASHINGTON, *Feb.* 3, 1869.

DEAR SIR: The amendment to the Ind. appropriation bill in committee of the whole, offered by Mr. Windom, to provide for payment of the Choctaw net-proceeds claim was ruled "out of order." The only chance now is to get it put on in the Senate. * * *

Yours truly, D. H. COOPER.

(134.)

WASHINGTON, 28 *Jan'y*, 1869.

DEAR SIR: * * * The committees of the Senate & House on Indian Affairs are to meet on Monday next to discuss the "net-proceeds claim" and agree, if possible, upon a report to their respective houses under the resolution of last session. This is equivalent almost to a conference committee and will decide the fate of the claim. Our Choctaw friends have been to me asking that you come over and help in this their hour of great need and peril. We must have a favorable report from the committee. * * * Come, if possible, and stay two or three days. Let me know when to look for you.

Yours truly, D. H. COOPER.

(137.)

J. H. B. Latrobe, Esq.

DEAR SIR: The Committee on Indian Affairs met to-day jointly and ordered a favorable report on the "net-proceeds." Please come over at once. We must not lose the fruits of this success. * * *

Yours truly, D. H. COOPER.

End of Exhibit "H."

A true copy. M. N. R.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *April* 7, 1890—3 o'clock p. m.

Met pursuant to adjournment, at the office of Enoch Totten, Esq., in the city of Washington, D. C.

Present: Reginald Fendall and the examiner.

324 & 325 Whereupon, Mr. Fendall announced the taking of testimony in rebuttal as closed.

MASON N. RICHARDSON,
Examiner in Chancery.

DISTRICT OF COLUMBIA, *To wit:*

I, Mason N. Richardson, an examiner in chancery, do hereby certify that the aforegoing depositions of Ella C. Mix, Edward M. Mix, Sarah M. MacDonald, Enoch Totten, Adam G. Morris, and John H. B. Latrobe were by me duly taken down in short-hand from the oral statements of the said witnesses, at the times and places within specified; that said depositions were thereafter by me transcribed from my said stenographic notes, and reduced to typewritten print, the said typewritten copy being a true and literal transcript from my said stenographic notes. The said depositions were then read over by the said witnesses, and by them, in my presence, sworn to, with the exception of the depositions of Adam G. Morris, which was signed by the consent of counsel and of the witness first had and obtained, by me, as examiner, the said witness, Adam G. Morris, having left the jurisdiction of this court.

I further certify that said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in issue in said cause.

I further certify that I am not of counsel for any of the parties to this cause, and am not interested herein directly or indirectly.

That my fee is $—.

MASON N. RICHARDSON,
Examiner in Chancery.

* * * * * * *

326 *Motion for Further Time Overruled and Cause Ordered Heard in General Term in 1st Instance.*

Filed May 19, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

HENRY E. McKEE
vs.
ELLEN COCHRANE *et al.* } Equity. No. 11262, Docket 28.

The motion filed in this cause on the 9th of May inst., on behalf of the complainant Latrobe, for further time to be allowed him for taking testimony having been argued by counsel and having been submitted to the court, with accompanying affidavits, and having been considered—

It is by the court, this 19th day of May, A. D. 1890, ordered that

said motion be, and it is hereby, overruled, the counsel for the complainant McKee consenting and stipulating in open court that the following affidavits and other documents (true copies of which are annexed hereto and filed herewith) may be used at the hearing of the cause as if the said affidavits were depositions regularly taken under the rules of the court and as if the said other documents were duly certified or their genuineness proved according to law so far as the matter and contents of said affidavits and other documents are competent evidence upon the issues made in the cause and with the right reserved to the complainant McKee to make the same objections to the competency or admissibility of said matter
327 that might be made on the offer of the same in open court or before an examiner—that is to say:

1. The affidavit of Thomas D. Ainsworth, sworn to on the 28th day of April, 1890.

2. The affidavit of C. E. Nelson, sworn to on the 29th day of April, 1890, and exhibits attached thereto.

3. The affidavit of John M. Hodges, sworn to on the 6th day of May, 1890.

4. The affidavit of Julius C. Folsom, sworn to on the 6th day of May, 1890.

5. The affidavit of C. E. Hovey, dated May 16th, 1890.

6. The official letter of B. F. Smallwood, principal chief of the Choctaw nation, addressed to Charles E. Hovey, dated executive office, Lehigh, Ind. Ter., May 4, 1890, and attested by J. B. Jackson, national secretary, Choctaw nation, under the seal of the said nation.

7. The following acts of the legislature or council of the Choctaw nation, to wit:

a. An act entitled "An act to prescribe and define the duties of the national treasurer in relation the 'net-proceeds claim,'" approved October 30th, 1873.

b. An act entitled "Resolutions relative to the Choctaw claims against the United States," approved November 10, 1854.

c. Resolutions relative to the Cochrane contract, approvad November 18, 1867.

d. An act entitled "An act revoking a certain contract known as Cochrane contract and all other contracts made by any Choctaw delegates," approved February 3, 1874.

e. Memorial to the Senate and House of Representatives of the United States in Congress assembled, repassed by the senate
328 (C. N.) November 3, 1874, and repassed by the house (C. N.) November 4, 1874.

f. An act entitled "An act asking for the payment of the judgment of the Court of Claims of the United States in favor of the Choctaw nation," approved February 25, 1888.

g. An act entitled "An act of the general council of the Choctaw nation to authorize a requisition for the payment of the five per cent. stipulated to be paid to John B. Luce, or his representatives or assigns, by the contract of the said Luce with the said Choctaw nation, dated the 26th of April, 1881, and approved the 24th of

May, 1881, so far as the same remains unpaid," approved February 25, 1888.

h. An act entitled "An act to authorize requisition to be made for the payment of a portion of what may be appropriated by Congress in satisfaction of the judgment of the United States Court of Claims in favor of the Choctaw nation."

i. An act entitled "An act making provision for the payment of the amounts due under the contracts made by the delegation of 1853 with J. B. Luce, Henry E. McKee, and J. G. Blunt, and directing the national treasurer to pay to said McKee and Luce the amounts due to each of them under said contracts," approved February 25, 1888.

8. The following letters and documents, to wit:

a. Certified copy of letter written by John J. Weed, approved by J. W. Denver, addressed to Col. Campbell Le Flore, Fort Smith, Arkansas, dated Washington, D. C., February 12, 1888.

b. Letter dated Boggy depot, C. N., March 2nd, 1867, addressed to Col. Pitchlynn, and written and signed by Allen Wright, P. C., C. N.

329 *c.* Letter dated executive office, Boggy depot, C. N., March 28, 1867, addressed to Messrs. Pitchlynn and I. Folsom, Choctaw delegates, and written and signed by Allen Wright, P. C., C. N.

d. Letter dated executive office, Boggy depot, C. N., March 29, 1867, and addressed to Hon. J. H. B. Latrobe, and written and signed by *by* Allen Wright, prin. ch'f, Choctaw nation.

e. Letter dated Choctaw nation, executive office, Boggy depot, July 15, 1867, addressed to the Hon. J. S. Black, Washington city, D. C., and written and signed by Allen Wright, P. C., C. N.

f. An agreement, under seal, between the two delegations of the Choctaw nation, signed by P. P. Pitchlynn, Isreal Folsom, Samuel Garland, and Peter Folsom (old delegation), and Allen Wright, James Riley, John Page, and Alfred Wade (new delegation), dated October 19, 1888.

Ordered, further, that this cause be certified to the general term, to be heard there in the first instance.

W. S. COX, *J.*

330 (Copy.)

Affidavit of Thomas D. Ainsworth.

FT. SMITH, ARK., *April 28th*, 1890.

Thomas D. Ainsworth, being duly sworn, upon his oath deposes and says:

I live at Skullyville, Choctaw nation; I am 39 years old; I was a representative of the Choctaw council in 1887 and 1888; I was present at the regular session of the council of 1887. At that session there was an act passed with reference to the so-called "net-proceeds claim," which provided that the money when appropriated should be deposited in some subtreasury of the United States subject to the order or control of the Choctaw council. Henry E.

McKee was not present at the time the above act was passed. Subsequently to that time, about the middle of November, Henry E. McKee came to Ft. Smith, and an extra session of the council was called to perfect legislation on the "net-proceeds claim." Col. C. Leflore, the delegate, attended said extra session of the council. A committee was appointed and bills were submitted to them by the delegate, Col. C. Leflore, such as he wanted passed; they were substantially the same bills which were subsequently passed by the council. The committee did not report them favorably. I for one was not satisfied with the bills presented, and I got up a bill of my own which passed the senate but failed in the house, whereupon the council adjourned.

In February, 1888, another extra session of the council was called for the purpose of considering the "net-proceeds claim" legislation, as I suppose; at any rate, that is what was done. At that session of the council the delegate, Col. C. Leflore, and Henry E. McKee were present. At this session I was a member of the committee having this "net-proceeds claim" legislation in charge. Three bills were submitted for the consideration of the committee. I am not positive who submitted them, but I rather think the chief submitted them to the council and the council referred them to the committee. It was understood the bills were prepared at Washington city, and were satisfactory to our friends there. I prepared an amendment which is section five (5) of the act of the Choctaw council of February 25th, 1888, or rather I modified the section already in the bill.

The annexed letter, marked Exhibit "A," was presented to and considered by the committee.

McKee's contract was not before the committee, but the committee had knowledge of it from having seen it in the report of the investigating committee on Indian affairs of the Senate of the United States. McKee was before the committee.

In said Senate report McKee testified:

"Q. I understand from you that under your contract you consider yourself bound to the Choctaws to pay all these outstanding claims for services prior to the date of your contract, as well as for all service incurred since that time; is that so?

331

"A. Yes, sir; certainly; that is it."

I think Mr. McKee stated to our committee substantially the same as quoted above, and he referred and called attention in explanation of the same to the letter already referred to, and marked "Exhibit A."

I have been a member of the Choctaw council from 1873 nearly continuously up to 1888, and during this time the "net-proceeds claim" was often discussed and legislation had thereon by the council. During this time I never knew of any other contract in reference to the "net-proceeds claim" except the Cochrane contract, and I never knew that McKee had a contract until November, 1887, and that the council never had any legislation in regard to McKee's contract prior to February 25th, 1888. And I understood that the nation was to be protected. I understood by section five (5), above

referred to, which I modified, obligated McKee to protect the nation against all claims of attorneys against the Choctaw nation under any contract made with the old delegation.

Exhibit B, hereto annexed, shows that McKee recognized and acted under the Cochrane contract, and stood in Cochrane's shoes.

I understood that Henry E. McKee was at Eureka Springs, Arkansas, a month or two after he got his money.

THOS. D. AINSWORTH.

Subscribed and sworn to before me, a notary public in and for Sebastian county, Arkansas, at the city of Fort Smith, Arkansas, this the 28th day of April, A. D. 1890.

[NOTARIAL SEAL.] JAS. A. CARBARY,
Notary Public.

My commission expires March 19th, 1891.

(Copy.)

(EXHIBIT "A" TO AINSWORTH'S AFFIDAVIT.)

WASHINGTON, D. C., *Feb'y* 12, 1888.

Col. Campbell Leflore, Fort Smith, Ark.

MY DEAR SIR: Mr. McKee has suggested to me that the Choctaw council might desire some assurance from the other attorneys who have claims against the "net-proceeds claim" for services alleged to have been rendered by them, of their willingness to trust McKee for their money, and not annoy and harrass the Choctaws with claims and suits, if he, McKee, should fail to settle with them to their satisfaction as his contract for thirty per cent. compels him to do. So far as I have ever heard everybody is willing to trust McKee if the Choctaws appropriate the thirty per cent. which his contract calls for. So far as I know, or have ever heard, every lawyer who has ever rendered service, or pretends to have rendered service in regard to the "net-proceeds claim" expects to get his pay out of the thirty per cent. and to get it through McKee. For myself, I expect
332 to be paid by McKee out of his thirty per cent. I have no claim against the Choctaw nation if McKee's thirty per cent. is paid, even if he should not pay me, but of this I have not the slightest doubt.

McKee's contract requires him to stand between the Choctaws and "other attorneys who have rendered service." He would be liable to suit in the courts here and elsewhere, wherever he could be found, if he should neglect or fail to carry out his agreement with the Choctaws to settle and adjust the claims of other attorneys who have rendered service upon principles of equity and justice. The Choctaws would not be liable to any such suit anywhere, either here or in the Choctaw nation. The only attorneys who have rendered services in the prosecution of the net-proceeds claim, or who

pretend to have rendered such service, and are not named in McKee's contract, are as follows:

1. Shellabarger & Wilson, whose fees are secured out of the five (5) per cent. payable to John B. Luce.

2. Gen. J. W. Denver, who represents himself and Gen'l Albert Pike. I understand they are willing to trust McKee, and look only to his 30 per cent. for payment.

3. Judge Cuppy, deceased. He had no contract with any one but McKee, and his executor looks only to McKee for payment.

4. My own fees are to be paid by McKee, and I have never expected them from any other source.

5. John T. Cochrane, deceased. Mr. McKee agrees in his contract to pay the widow of John T. Cochrane, deceased, five per cent. out of said thirty per cent., and I understand this arrangement is satisfactory, not only to Mrs. Cochrane, but to Mr. Cochrane's executor.

6. John H. B. Latrobe. He looks to Mr. McPherson, executor of Mr. Cochrane, for his fee. Whatever sum Mr. Latrobe or Mr. Cochrane gets comes out of McKee's thirty per cent.

7. Ward H. Lamon claims as surviving partner of Hon. J. F. Black, deceased. It is a matter within my own knowledge that he asserts no claims against any other fund, or against the Choctaws, except the thirty per cent. covered by Mr. McKee's contract; and he expects and insists that whatever he gets shall come out of Mr. McKee's thirty per cent., and not out of the Choctaws.

If I could in any way get the ear and confidence of your Choctaw friends, I would assure them that the shortest and safest road, and the one most free from every possible complication, is for them to trust McKee as he has for so many years trusted them. He suggests to them no legislation that is not for their interest and success. He will lead them into no pitfalls or difficulties of any kind, if, in the exercise of their usual wisdom and good sense, the general council shall enact the statutes which have been carefully prepared, not only for his own protection, but for that of the Choctaws.

Yours truly, JNO. J. WEED.

The foregoing statement of the case by Mr. Weed is just and fair, and I assent to the proposition in behalf of myself and Gen. Albert Pike.

J. W. DENVER.

333 EXHIBIT B.

The Choctaws in account with the delegation of 1853, composed of P. P. Pitchlynn, Samuel Garland, Israel Folsom, Dickson W. Lewis, and Peter Folsom, now represented by Campbell Leflore, their successor and survivor in office.

DR.

For their fees of 20 per cent. on $2,858,798.60, the amount of the judgment of the Court of Claims rendered December 15, 1886, in favor of the Choctaw nation, as provided in their contract, dated Nov. 21, 1855, the sum of.....	$571,759 72
And in addition thereto whatever may be appropriated by the United States for interest on that amount.	
For balance still due and unpaid to the delegation under the settlement of November 1, 1861, as shown by the statement hereto attached and marked "A".....	30,395 39
	$602,155 11

And interest as above on $571,759.72.

The above and foregoing statement is true and correct as ascertained from all the data now in the possession of the delegation and attorneys.

CAMPBELL LEFLORE,
Choctaw Delegate.

H. E. McKEE,
Attorney for Choctaw Nation.

Washington, D. C., Jan. 16, 1888.

Statement "A."

By the act of the general council of Nov. 1, 1861, making a settlement with the delegation and its attorneys up to that time, it is declared that there is due to the delegation and the attorneys the sum of $84,394.23; and it is further shown by the paper thereto attached that the sum of $14,140 is due to John T. Cochrane, and the sum of $70,254.23 is due to the delegation.

From this balance of.....		$70,254 23
Must be deducted the following amounts subsequently paid to them on account of that debt and which were not charged against them in that settlement, viz:		
In 1861, out of the money brought to the nation by Stark & Hotchkins.....	$15,071 37	
In 1862, out of money brought by same parties	15,204 47	
In 1866, paid by Allen Wright, treasurer, to P. P. Pitchlynn	9,583 00	
		39,858 84
Balance still due delegation.....		$30,395 39

334 (Copy.)

Affidavit of Coleman E. Nelson.

COLEMAN E. NELSON, being duly sworn, on his oath deposes and says:

I live at Antlers, Choctaw nation, Indian Territory. I am 59 years old. I was national attorney for the Choctaw nation during the years 1887 and 1888. While such attorney I received a letter from Thompson McKinney, principal chief of the Choctaw nation, requesting my opinion as law officer of the said nation "as to the constitutionality and validity of an act passed by the general council and approved February 3, 1874, entitled An act entitled An act revoking a certain contract known as Cochrane's contract, and all other contracts made by any Choctaw delegates," and the following Exhibit A is a true copy of said letter.

In responce to that letter of the principal chief I submitted the following opinion, a true copy of which is hereto appended and marked Exhibit B.

I was a member of the Choctaw council from 1857 to 1869 continuously, and was familiar with all the legislation in regard to the Choctaw "net-proceeds claim" during that time. From my connection with tne council I know that often repeated legislation was had in connection with the "net-proceeds claim," and from the various reports submitted almost yearly to the council by the delegates and the frequent reference to Cochrane as their attorney under contract to aid in the prosecution of the claim, that he was, up to his death in 1866, recognized as the attorney assisting and aiding the Choctaw delegation in the prosecution of the claim. Furthermore, in the general settlement of the prosecution of that claim made with the Choctaw council in 1861 by the Choctaw delegates, which closed up the matters entrusted to Cochrane, not only in connection with the "net-proceeds claim" but with the treaty of 1855, and also with the relinquishment of lands of the Choctaws lying west, that these other interests of the Choctaw nation, protected by Cochrane, was fully recognized, and he was compensated by the action of the council at that time for services, and that the nation has known only and recognized only the Cochrane contract in connection with the prosecution of the "net-proceeds claim."

So far as McKee's contract is concerned, I knew nothing of that. I first knew of the McKee contract about 1886 or 1887. I learned of it when I was in Washington, and that was after the death of Col. Pitchlynn.

McKee claims that his contract was made in 1870. Now, from 1870 up to the death of Col. Pitchlynn, at his yearly visits to the Choctaw nation, he never informed anybody that McKee was a contractor, or that he made a contract with McKee, but that he was working under the Cochrane contract.

From 1870, when McKee claims to have made this contract with the Choctaw delegation to prosecute the claim, Pitchlynn was fre-

quently at the nation in regard to the prosecution of this
335 claim, occasionally accompanied by Mr. Luce, and, during all this time, he never mentioned that McKee had a contract for the prosecution of this claim, and nobody in the Choctaw nation, so far as I know, ever knew that such a contract existed until about 1886 or 1887, and long after the death of Col. Pitchlynn.

I was at Washington when I first found it out. It was not disclosed at the nation until about the time of the printed report of Senate Indian investigating committee was made.

I was at the council in February, 1888, when the legislation was enacted by which the money of the "net-proceeds claim" was drawn from the Treasury of the United States, and met Mr. Henry E. McKee there.

McKee then told me while the question of the legislation was pending before the council, that he considered himself obligated under his contract to pay all outstanding obligations to attorneys for the services rendered in the prosecution of that claim prior to his own contract, that is, services rendered under the Cochrane contract, and he showed me letters from these attorneys purporting to be sent to the Choctaw delegation that the money might be paid to him for that purpose, and that they would not look to the nation for any money, but would only look to McKee for their fees. He showed me such a letter, and I suppose he made similar representations to the committee of the council having that matter in charge, and it was upon those representations that the laws were passed, particularly upon the letter purporting to be from the attorneys that they would trust McKee and accept him as paymaster.

C. E. NELSON.

Subscribed and sworn to before me, a notary public in and for Sebastian county, Arkansas, at the city of Fort Smith, Arkansas, this the 29th day of April, A. D. 1890.

JAMES A. CARBARY,
Notary Public.

My commission expires March 19th, 1891.

EXHIBIT A.

EXECUTIVE OFFICE, CHOCTAW NATION, 1887.

Hon. Coleman Nelson, national attorney, Choctaw nation.

SIR: For the information and guidance of myself and other executive officers of this nation, I request your official opinion in writing as to the constitutionality and validity of an act passed by the general council and approved February 3, 1874, entitled "An act entitled An act revoking a certain contract known as Cochrane's contract and all other contracts made by any Choctaw delegates."

I invite your attention specially to the question of the effect of that legislation upon contract for services rendered and the rights of parties under the Cochrane contract and the subsequent contract

made by the delegation of 1853, with J. G. Blunt and H. E. McKee, now known as McKee's contract, as attorneys in the prosecu-
336 tion of the claims of the Choctaw nation against the United States. The fees arising out of said contract being contingent upon success, which is now assured, it is desirable that those who have rendered valuable services to the Choctaws should be officially assured that there is no legal doubt about their receiving the compensation for which their contract makes provision.

I have the honor to be, very respectfully, &c.,

THOMPSON McKINNEY,
Principal Chief, Choctaw Nation.

EXHIBIT B.

OFFICE OF THE NATIONAL ATTORNEY,
CHOCTAW NATION, *July 25th*, 1887.

Honorable Thompson McKinney, principal chief, Choctaw nation.

SIR: I am in receipt of your communication of the 11th inst., in which you request my opinion in regard to the constitutionality of a certain act of the general council entitled "An act revoking a certain contract known as Cochrane's contract and all other contracts made by any Choctaw delegates," approved February 3rd, 1874.

So much of the above-entitled statute as presents the question upon which you desire my opinion, is as follows:

"That a certain contract, known as Cochrane's contract, is hereby revoked, and declared null and void. That any and all contracts heretofore entered into with attorneys and claim agents by any delegates of the Choctaw nation are hereby revoked, and declared null and void, by this nation."

It is necessary to a proper understanding of the questions you have submitted for my consideration, that a brief statement of the previous legislation of the general council, in regard to the contracts to which this last statute refers, and the action taken under the authority of that legislature should be here stated.

That legislation and the action taken under its authority and with its sanction are as follows:

On the 9th of November, 1853, the general council of the Choctaw nation appointed P. P. Pitchlynn and Israel Folsom, Dixon W. Lewis, and Samuel Garland, delegates for said nation, and fully empowered said delegates "to represent and institute in behalf of the Choctaw people a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government, east of the Mississippi river, and to protect and defend all and every right and interest of the Choctaws arising under treaty stipulation or otherwise.

Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the Government of the United States.

Be it further resolved, That in case of resignation or death
337 of any of the said delegates above mentioned, the chief has power to appoint any person to fill such vacancy in his district."—Laws of Choctaw Nation, 1869, pp. 123, 124, 125.

2. On the 10th day of November, 1854, the delegation thus appointed and empowered, were further instructed and authorized, by the Choctaw general council, "to remain at Washington city and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full power to take all measures and to enter into all contracts which, in their judgment, may become necessary and proper, in the name of the Choctaw people, and to bring to a final and satisfactory adjustment and settlement all claims or demands, whatsoever, which the Choctaw tribe, or any member thereof, have against the Government of the United States by treaty or otherwise."—Laws of Choctaw Nation, p. 134.

3. On the 4th day of November, 1857, the general council again instructed said delegates, "to proceed to Washington as soon as practicable, and full power is given them, or any of them, to urge a speedy conclusion of all matters of unsettled business arising under the treaty aforesaid, and make due report of any progress or final conclusion thereof to the general council."—Law- of Choctaw Nation, p. 162.

4. Dixon W. Lewis having died, Peter Folsom was appointed his successor as a member of said delegation.

5. On the 18th of November, 1867, the general council passed the following other and further statute relating to this subject, to wit:

That the delegation composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, are hereby notified that inasmuch as they have nearly consum[m]ated the "net-proceeds question," they shall proceed without delay to Washington city for the express purpose of bringing the subject-matter of these resolutions to the notice of Congress, and to respectfully ask an early appropriation to be made to carry into effect the amount due the nation, as stated in the foregoing preamble to these resolutions.

SEC. 3. That it is hereby declared to be the intention of the Choctaw nation, that the terms of service of the delegates herein mentioned shall expire whenever the whole amount of the "net-proceeds question" is adjusted and settled by Congress, and said delegates are required to render a full and just report of their proceedings and progress they are making with the claim from time to time to the principal chief of this nation.—Laws of Choctaw Nation, pp. 473, 474.

These are all the statutes which have been enacted by the Choctaw council, that are involved in the determination of the question that you have submitted for my decision.

The delegation named in the first of the above-cited statutes, acting under the authority therein conferred, on behalf and in the name of the Choctaw nation, on the 13th day of February, 1855, entered into a contract with John T. Cochrane for the purposes and to effect the objects contemplated in the said first-quoted statute.

In consideration of the services to be rendered, and the expenses to be paid and borne by said Cochrane, under the said contract,
338 it was stipulated and agreed by the said delegates for and on behalf of the Choctaw nation, as follows:

"And the said parties of the first part, for and in behalf of and in the name of the Choctaws, do hereby covenant, promise, and agree to and with the said party of the second part, and thereunto solemnly and irrevocably pledge its and their faith and honor, that of, and out of, any and all moneys obtained by and paid to said nation, or individuals thereof, for and on account of any or all of said claims, there shall be promptly and faithfully paid to the said party of the second part the amount of 30 per centum of every and all such sum or sums of money, payable to the said party of the second part, his heirs or assigns, as soon as the same shall be paid over by the United States to the said Choctaw nation, or its legally authorized representatives, without any evasion or delay."

The said contract was contingent upon the collection of the claims specified therein by the said Cochrane; but he died in 1866, without having accomplished the objects contemplated by said contract.

In the performance of said contract by said Cochrane, he incurred obligations to pay for services rendered by persons who assert that they rendered services to said Cochrane, in the prosecution of said claims, under said contract. The prosecution of said claims by said Cochrane, and his associates and legal representatives, having been discontinued, it became necessary for the said delegates to make provision to continue the prosecution thereof in behalf of, and for the benefit of, the Choctaw nation. In order to continue and secure the successful prosecution of said claims the said delegates, who at that time survived their associates, to wit, Peter P. Pitchlynn and Peter Folsom, on the 16th day of July, 1870, entered into a contract with Jas. G. Blunt and Henry E. McKee. The said contract thus made in the name and on behalf of the Choctaw nation contained the following recitals and provisions, to wit:

"Whereas on behalf of the Choctaw people, we have employed James G. Blunt, of the city and county of Leavenworth, State of Kansas, and Henry E. McKee, of Fort Smith, Arkansas, as counsel to prosecute said claims, and recover the same to the Choctaw nation, or people: It is therefore stipulated and agreed that for services rendered and money expended and to be expended by them in prosecution of said claims, the said James G. Blunt and Henry E. McKee shall receive 30 per centum of the one million eight hundred and thirty-four thousand and eighty-four ($1,834,084) dollars awarded and due the Choctaw people by the United States, or of any sum that may be paid by the United States on account of said claim, which 30 per centum of said claim shall be paid to said Blunt and McKee or their legal representatives, whenever the money or bonds arising from said claim shall come into the possession of the party or parties authorized by the Choctaw people to receive the same.

The said Blunt and McKee to pay to Mrs. John T. Cochrane, of

Washington city, D. C., (5) five per centum from the (30) thirty per centum before referred to whenever they shall receive the same; and the said Blunt and McKee further agree to adjust the
339 claims of all parties who have rendered services heretofore in the prosecution of said claim upon the principal of equity and justice, according to the value of the services so rendered."

The said Blunt having died, the said McKee continued the prosecution of said claims, as the successor or survivor of the said Blunt.

The result of the services rendered and the money expended by the said Blunt and McKee in the performance of their obligations under said contract has been the securing of a judgment in the Supreme Court of the United States for the sum of $2,858,798.62. Upon the payment of the said judgment by the United States, the Choctaw nation will be required to pay to the said McKee thirty per cent. of the amount collected and paid to the Choctaws as provided in said contract, unless the validity of said contract has been impaired by the provision of the above-quoted act of February 3rd, 1874.

I am clearly of the opinion that said act cannot have that effect. These contracts were each made by competent authority, and the Choctaw nation is bound by their provisions, unless they were "revoked" and made "null and void" by that statute. The Choctaw council has no power to revoke or to declare "null and void" any contracts which may have been lawfully made by the Choctaw nation. This power is expressly denied to the general council by article 11, section XXI, of the constitution of the Choctaw nation, adopted January 11, 1860. That provision of the Choctaw constitution is as follows:

"The general council shall pass no bills of attainder, retrospective law, nor law impairing the obligation of contracts."—Choctaw Laws, 1869, p. 9.

If the act of February 3rd, 1874, is a valid law, it revokes, repudiates, and impaires the obligations of two contracts which were made by the authority of the Choctaw nation, in its name, and for its benefit. It is a law which, in express terms, "impaires the obligation of contracts." It is clearly in conflict with article 11, section XXI, of the Choctaw constitution, and is for that reason unconstitutional and void. The only other question which requires consideration is, whether such a law is binding upon the executive officers of the Choctaw nation. An unconstitutional law is no law for anybody or for any purpose.

Such a law is simply void, and impaires no rights which it seeks to destroy. The Choctaw constitution recognizes the force and correctness of this principal, when it declared in art. VII, section 23, "that any law which may be passed contrary to the provisions herein specified shall be null and void."—Choctaw Laws, 1869, page 21.

The Choctaw constitution is the supreme law, not only for all the Choctaw people, but for the general council and the executive officers which that constitution provides may be appointed. Each and all are subject to its limitations and restrictions, and no one, whether

citizen, senator, representative, or judicial officer, is at liberty to disregard its provisions.

I have no hesitation, therefore, in advising you that the act of February 3rd, 1874, is in conflict with section 21 of article 11 of the Choctaw constitution. It attempted to "revoke" and to declare "null and void" a contract made in the name and by the authority of the Choctaw nation. It sought to avoid and repudiate obligations which the Choctaw nation had assumed under valid and binding contracts. I must believe that any statute passed by the general council which had this object, and attempted to accomplish such a result, was passed without that fair and deliberate consideration which has heretofore characterized the legislation of the general council.

340

The statute to which you invite my attention is wholly null and void. It impaired no contract theretofore lawfully made by authority of, or in the name of, the Choctaw nation. It could not impair or destroy any rights which had been acquired under such contracts. It did not attempt to revoke the authority which had been expressly conferred upon the Choctaw delegates by the act of November 9, 1853, and the subsequent acts to which I have directed your attention; for the authority there conferred had been completely executed by the making of these contracts, which the act of February 3rd, 1874, attempted to impair. It is very clear as a legal proposition that an authority which had been executed cannot be revoked, and if the act I am considering was intended to accomplish that result, it is equally null and void for the reason I have stated. It necessarily follows, therefore, from what I have stated that the contracts made by the delegates appointed under the act of November 9th, 1853, and the subsequent acts above quoted, are valid and binding contracts with the Choctaw nation, and that the obligations assumed by said nation, under the authority of said statutes, and the contracts made thereunder, must be paid, satisfied, and discharged by the Choctaw nation as provided by law, notwithstanding the provisions of the act of February 3rd, 1874.

I have the honor to be, very respectfully,

C. E. NELSON,
National Attorney.

(Copy.)

Affidavit of John M. Hodges.

ATOKA, INDIAN TERRITORY.

John M. Hodges, being duly sworn, on his oath deposes and says:

My name is John M. Hodges; age, 40 years; residence, Atoka, a town of the Choctaws, in the Indian Territory. I was a member of the Choctaw council of 1887 and 1888, and was present at the called or extra session of that council held in February, 1888, when the acts were passed in respect to the settlement or payment of the "net-proceeds claim." At this called session I was a member of the committee to which these acts were referred by the council for con-

sideration and report. Henry E. McKee came before the committee, and his letter of authority to act for the other attorneys in the settlement of their fees was presented to the committee, and after explanation by McKee was accepted by the committee, and subsequently on the recommendation of the committee it was accepted by the council.

341 McKee claimed to represent all the attorneys who had ever rendered service in the prosecution in the net-proceeds claim, either under the Cochrane contract or under his own contract, which was, as we understood it, substantially a continuation of the Cochrane contract. And in support of this claim there was laid before our committee a letter of attorney signed by John J. Weed and approved by J. W. Denver, for themselvss and the other attorneys, accepting McKee as their agent. In this letter of attorney they say to the Choctaw delegate having charge of the net-proceeds claim, that, so far as they know, "everybody is willing to trust McKee; every lawyer who has ever rendered service or pretends to have rendered service in regard to the net-proceeds claim expects to get his pay out of the 30 per cent., and get it through McKee."

And they say further, that "McKee's contract required him to stand between the Choctaws and other attorneys who have rendered service," and the "other attorneys" are then named or described. It was upon the faith of this letter or attorney, and the representations of McKee that he would in good faith settle with all the other attorneys according to the principles of equity and justice, for their services and expenditures, and hold the nation harmless, free and discharged from all obligations to them or any of them, either under his own contract, or under the Cochrane contract. I say it was upon the faith of this letter and these representations that the acts of February 25, 1888, were passed by the Choctaw council. McKee's contract was not before the committee. It was not known in the nation until published in the report of the Indian committee of the United States Senate in 1887. We understood it to be substantially the same as the Cochrane contract, which was well known to all our people, and that by it McKee was, in effect, to take the place of Cochrane, and to disburse the 30 per cent. which was to go to the attorneys. We understood McKee's contract bound him to settle with all other attorneys who had rendered service in the prosecution of the claim as well before the time of his contract as after. This is what he told our committee he would do, and our delegate said that such was the understanding of Colonel Pitchlynn and myself. In other words, McKee was to represent all the attorneys, and take the fee of 30 per cent. and settle with them all according to equity and justice; so he said; so delegate Leflore said; so we understood McKee's contract; so we understood the letter of attorney. It was a lump transaction. No mention was made of individual interests. Mrs. Cochrane was not considered apart from the Cochrane contract. The payment of the 30 per cent. to McKee was to be in full of all demands against the nation for or on account of services of attorneys in the prosecution of the claim.

I will say further, that I, myself, read and interpreted the attorney's letter of attorney to McKee, before our committee, so that it was before the committee in both languages. My impression is that McKee was present at the time. Section five (5) of one of the acts was intended to cover and protect the rights of all the attorneys, as well as the nation. The Choctaws desired that all parties who had rendered services in the prosecution of the claim
342 should be paid out of the 30 per cent. according to the principles of equity and justice; they understood McKee's contract bound him to so pay them, and he certainly represented to our committee that he would so pay them if the 30 per cent. was put into his hands.

There can be no doubt about McKee's representations on this subject, nor about the intention of the council in passing the acts of February 25, 1888. No member of the council understood they were voting McKee the whole fee of 30 per cent. for his own use, leaving the other attorneys unpaid, to besiege the council or nation hereafter for compensation. That was not their idea. Their whole purpose and object was to secure an equitable distribution of the 30 per cent. among the attorneys who had at any time rendered service in the prosecution of the claim, and to discharge the nation from liability therefor. The money was voted into McKee's hands for that purpose, and no other.

JNO. M. HODGES.

Sworn and subscribed to before me this 6th day of May, A. D. 1890.

[SEAL.] DAVID N. ROBB,
U. S. Commissioner, Eastern Dist. of Texas.

(Copy.)

Affidavit of Julius C. Folsom.

ATOKA, INDIAN TERRITORY.

JULIUS C. FOLSOM, being duly sworn, on his oath deposes and says:

My name is Julius C. Folsom. My residence is Atoka, Indian Ter. I am fifty-nine years old. I am a son of Israel Folsom, one of the delegates who made a contract with John T. Cochrane to prosecute for the Choctaw nation what is known as the "net-proceeds claim," and, through my father and in other ways, I am tolerably familiar with the history of the prosecution of that claim at Washington. I also know something of the official action of the Choctaw national council or legislature in respect to the prosecution of the claim, and especially the late action by which Henry E. McKee was authorized to receive and disburse the 30 per cent. allowed by the Cochrane contract for attorney's fees. I was not a member of the council of 1888, which enacted the late laws with respect to the disposition of the net-proceeds money; but I was present at the capital for two days during its session, and during that time I

boarded at the same house with McKee, and Delegate Leflore, and was in constant communication and conference with them, except when interviewing, at their request, members of the council with whom I was well acquainted, some of whom could not speak the English language. As I spoke both languages, Mr. McKee and Delegate Leflore desired me to explain to such members of the council as spoke only the Choctaw language the legislation they desired. McKee told me to tell them that unless they passed the acts in the shape he had prepared them the attorneys at Washington would defeat any appropriation by Congress to
343 pay the claim. He said he was the representative of those attorneys, and they wanted the fee of 30 per cent. for the attorneys paid to him at Washington, so that they could get their money through him there; and he said that unless this was agreed to no money would be appropriated for the claim. This I stated in Choctaw to members of the council at McKee's request. The only contract mentioned to me by McKee or Leflore was the Cochrane contract. It was understood by the members of the council with whom I talked, and, so far as I know, by everybody in the Choctaw nation, that the settlement was to be made under the Cochrane contract. That contract was well known, and was considered binding and irrepealable. It set apart 30 per cent. of the amount allowed on the claim to pay attorneys for the prosecution—not one attorney but all the attorneys—McKee so said to me, and instructed me to so say and explain to members of the council in their own language, and I followed McKee's instructions. I said that McKee had a letter of attorney from the other attorneys authorizing him to represent them in the settlement of the 30 per cent.; that the bills he had brought with him from Washington had been carefully drawn so as to satisfy the attorneys there, and so as to discharge the nation from all liability to attorneys when the 30 per cent. should be paid to McKee. I was also assured by Mr. Luce, one of the attorneys in the prosecution of the net-proceeds claim, that Mr. McKee represented all the attorneys who had ever rendered service in the prosecution of said claim; and Delegate Leflore also stated to me that McKee was the authorized agent of all the other attorneys. These assurances and statements I communicated in the Choctaw language to such members of the council as I was well acquainted with, which was a large number of them. I may say in this connection that when the council had concluded to entrust McKee with the 30 per cent. to pay attorneys they determined to add another member to their delegation to see that their intention was carried out, and Edmund McCurtain was appointed. He accompanied Delegate Leflore to Washington, and saw, as I am informed, that the 30 per cent. was paid over to Luce and McKee.

J. C. FOLSOM.

Sworn & subscribed to before me this 6th day of May, A. D. 1890.

[SEAL.] DAVID N. ROBB,
U. S. Commissioner, Eastern Dist. of Texas.

(Copy.)

Affidavit of Charles E. Hovey.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

Charles E. Hovey, being duly sworn, on his oath says:

That he is an attorney-at-law of Washington, D. C.; that he has just returned from the Indian Territory and from Fort Smith, where he met Colonel Campbell Leflore, who succeeded the old delegations as delegate of the Choctaw Indians, for the prosecution of their so-called net-proceeds claim against the United States, and he
344 ascertained from said Leflore that he, Leflore, would testify, if called upon, to the following facts:

First. That his predecessors in office, himself, the Choctaw general council and officers, and the Choctaw people, were all more or less familiar with the so-called Cochrane contract, which set aside 30 per cent. of whatever might be recovered on said net-proceeds claim, as a fund to pay for attorneys' services in its prosecution; and that all these people, so far as he knows, understood said contract to be a continuing or perpetual contract, and that it was in substance continued or perpetuated by the McKee contract, McKee being substituted for Cochrane, receiving Cochrane's fee and assuming Cochrane's liabilities, by agreeing to pay to Mrs. John T. Cochrane five per cent. and to adjust the claims of all parties who had theretofore rendered services in the prosecution of said claim. It was not understood by the clause providing for the payment of Mrs. Cochrane of five per cent. that such payment was a gratuity to her, or for her own exclusive use, but it was intended by that clause to provide for liabilities incurred under the Cochrane contract.

Second. That McKee understood his contract to be in substance a continuation of the Cochrane contract, and it was at his instance and by his procurement that the opinion of the law officer of the Choctaw nation was obtained, sustaining the validity and irrevokable character of that contract.

Third. That both he, as delegate, and McKee, as successor of Cochrane, in the management of the prosecution of the net-proceeds claim represented to the general council of the Choctaw nation in February, 1888, while the bills for the disbursement of the attorneys' fee of 30 per cent. were pending before that body, that McKee was bound by his contract to adjust all attorneys' claims for services at any time rendered in the prosecution of the net-proceeds claim, and that he would do so in good faith if the council would place the 30 per cent. in his hands.

Fourth. McKee represented to the delegate and to the committee of the Choctaw council having charge of the bills in relation to the net-proceeds claim, that he was authorized to act for all the other attorneys who had rendered service in the prosecution of said claim, and that they were willing that he should collect the whole fee of 30 per cent., and they would look to him for their portion thereof. In support or corroboration of this representation there was sent to

the delegate and by him laid before the council, a letter of attorney signed by John J. Weed and J. W. Denver.

That the four bills passed by the Choctaw general council and approved on the 25th day of February, 1888, respecting the 30 per cent. attorneys' fee for the prosecution of the net-proceeds claim, were all prepared in Washington by or at the instance of McKee.

Affiant further says, that while in the Indian Territory he visited the capital in company with the national secretary, Mr. J. B. Jackson, who showed him in the archives of said nation the four original acts relating to the attorneys' fee of 30 per cent. for the prose-
345 cution of the net-proceeds claim. These acts are typewritten, having but one material manuscript interlineation, and that occurs in the fifth section of the act numbered four. The only paper filed in the archives with these four bills, as shown to affiant by the national secretary, was a letter in the handwriting of John J. Weed, endorsed in the handwriting of J. W. Denver. McKee's contract was not on file.

CHARLES E. HOVEY.

Subscribed and sworn to before me, this 16th day of May, A. D. 1890.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Cl'k.*

EXECUTIVE OFFICE, LEHIGH, IND. TER.

Gen. Chas. E. Hovey.

DEAR SIR: In answer to your inquiry, I will say that I am now the principal chief of the Choctaw nation. I have been a member of the Choctaw council off and on for over thirty years. I was a member of the council of 1888, and was speaker of the house of representatives of said council, and was present at the extra session held in February, 1888, when the laws were passed in respect to the payment of the net-proceeds claim; and I appointed the committee on the part of the house which considered and reported back to the house the bills authorizing a settlement to be made with the several attorneys at Washington through Henry E. McKee. McKee presented to the committee a letter of attorney from the other attorneys at Washington, authorizing him to act for them. It was on the faith of that letter of attorney and the representations to the committee made by McKee, that he would settle with all the other attorneys who had at any time rendered service in the prosecution of the "net-proceeds claim," that the acts were passed putting the thirty per cent. in his hands. It was not put into his hands for himself alone, but for himself and all the other attorneys whom he claimed to represent. These were named in the letter filed with the committee. The committee reported to the council that McKee had appeared before them and satisfied them that he was authorized to represent the other attorneys and that a payment to him would discharge the nation from all liability to any and all attorneys. The nation always recognized the amount set apart in the Cochrane contract, namely, thirty per cent., as due the attorneys. They un-

derstood McKee's contract was simply a continuation of that contract, and that he was to take Cochrane's place and disburse the money—the thirty per cent. The committee reported to the council that McKee had satisfied them that he would do this in good faith. This is the way I understood it and the way, I think, the council understood it.

Very respectfully,

B. F. SMALLWOOD,
Principal Chief of the Choctaw Nation.

This May 4th, 1890.

By the principal chief.
[SEAL.]

J. B. JACKSON,
National Secretary, Choctaw Nation.

346 Bill No. 28.

An act to prescribe and define the duties of the National Treasurer in relation to the net-proceeds claims.

SEC. 1. Be it enacted by the general council of the Choctaw nation assembled, That as soon as any amount may be appropriated by Congress for the net-proceeds (claim), the National Treasurer be authorized and directed to receive the same at Washington and to pay not exceeding thirty per cent. in fulfillment of the Cochrane contract, and twenty per cent. of such appropriation for the delegates of 1853–1854, to enable — to discharge all liabilities and obligations under said contracts and all expenses necessarily incurred in recovering said claim, the other half to be retained for claims of individuals or for national purposes as indicated — 11th and 12th articles of the treaty of 1855—provided that all just debts due the nation, whether from the said delegation or for any sum improperly advanced under the Cochrane contract shall first be deducted, and the residue coming under said contract or to said delegation respectively after final settlement at Washington, shall be paid to them or their representatives by said Treasurer—the object of this act being to secure a fair settlement and a full payment of the 30% and said 20% after first deducting whatever has already been paid.

SEC. 2. And be it further enacted, That this act shall take effect from and after its passage, and that all acts and parts of acts in conflict herewith be, and the same hereby are, repealed.

Proposed by D. F. Harkins.
Approved October 30, 1873.

This is to certify that the above and foregoing is a true and correct copy of the original act, as it appears on the house journal now one file in this office.

Witness my hand and seal of the Choctaw nation this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

Endorsed as follows:

Passed the house, October 30, 1873.

W. W. HAMPTON, *Speaker.*

Passed the senate, October 30, 1873.

W. ROBUCK, *President.*

Approved this 30th of October, 1873.

WILLIAM BRYANT, *P. C., C. N.*

Bill No. 28.

Resolutions Relative to Choctaw Claims Against the United States.

SECTION 15. Whereas, the general council of the Choctaw nation had — its session November 9, A. D. 1853, appointed P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland, delegates to represent the Choctaw nation at Washington city, and to institute in their name and behalf a claim upon the Government of
347 the United States, for further pay and remuneration for the country ceded by them to said Government under the treaty concluded at Dancing Rabbit creek, 1830, and to protect and defend every right and interest of the Choctaws arising under treaty stipulations, or otherwise, with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the United States Government, and to adjust and bring to a close all unsettled business of the Choctaw people with said Government; and whereas the incipient debts had been taken by said delegations to effect the object of their mission; and

Whereas, and from the intricate nature of said claims *of said claims* and interests of the Choctaw people, further trial and exertion is necessary to bring them to a successful issue; and

Whereas, the Choctaw council has undiminished confidence in the wisdom, prudence, and integrity of said delegation; therefore

Be it resolved by the general council of the Choctaw nation, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland, be, and they are hereby, instructed to remain at Washington city, and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full power to take all measures and to enter into all contracts which, in their judgment may become necessary and proper in the name of the Choctaw people and to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise.

Be it further resolved, That the Choctaw delegation be instructed to request the Commissioner of Indian Affairs to authorize D. H. Cooper, United States agent, to repair to Washington city for the purpose of assisting in the investigation of Choctaw claims, and by his counsel and advice to aid in consummating the final and satisfactory settlement of all unadjusted Choctaw matters with the Government of the United States as speedily as possible.

Approved, November 10, 1854.

This is to certify that the above and foregoing is a true and correct copy of the original act now on file in this office.

Witness my hand and seal of the Choctaw nation, this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

Whereas, Col. P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, were duly appointed delegates and commissioners as such in the name of the Choctaw nation, under several acts and resolutions of the general council, to institute in behalf of the Choctaw people a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government, east of the Mississippi river; and whereas, said delegates did effect a basis for the payment of said claims, as mentioned in the 11th and 12th articles of the treaty of June 22, 1855, and
348 thereupon the Senate of the United States on the 9th of March, 1859, did agree that the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States, on the first day of January of the same year, deducting therefrom the costs of survey and sale, and all proper expenditures and payment under this treaty, &c., and did authorize the Secretary of the Interior to cause an account to be stated with the Choctaws, showing what amount is due them according to the principles of settlement, and report the same to Congress. (See report, Senate No. 374, 2nd session, 35th Congress, 1898–'9.) And whereas, it appeared that the Secretary of the Interior did find, that, according to the principles of settlement prescribed by said resolution, there was due to the Choctaw nation the sum of $2,981,247.30; and whereas, the Senate Committee of Indian Affiars revised the account and reduced the amount thus reported to be due the Choctaws to $2,332,560.85, and said Congress by act of March 2, 1861, did appropriate the sum of $500,000 on account of this claim, with a proviso that in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians; whereas, by the articles of the treaty of April 28, 1866, the United States reaffirmed all obligations arising out of treaty stipulations on account of legislation with the Choctaw and Chickasaw nations entered into prior to the late rebellion, and in force at that time "not inconsistent herewith," as well as all the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made, and *and* had in connection with them shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty; therefore,

SEC. 1. Be it resolved by the general council of the Choctaw nation, assembled, That the delegates, composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, are hereby notified that inasmuch as they have nearly consummated the "net-proceeds question," they shall proceed, without delay, to Washington city for the express purpose of bringing the subject-matter of

these resolutions to the notice of Congress, and to respectfully ask an early appropriation to be made to carry into effect the amounts due this nation, as stated in the foregoing preambles of their resolutions.

SEC. 2. Be it further enacted, That in the event an appropriation shall be made by Congress, in whole or in part payment of the net-proceeds sale of the lands of the Choctaws, which they ceded to the United States, east of the Mississippi river, the delegates herein mentioned shall report to the national attorney of this nation the fact of such appropriation, who shall proceed to investigate the claims of such delegates as well as the amount that may be due their at-neys for fees under a certain contract said to have been made with John T. Cochrane, dated February 13, 1855, and shall report the amount due to the delegates and attorneys to the principal chief of this nation, who shall convene the council should he deem it necessary in order to provide payment due under the contract aforesaid, as well as to carry into effect the 12th article of the
349 treaty of June 22, 1855. It being understood, however, that no money shall be paid on said contract, or any other contract, which had not been duly authorized and approved by the council, and when contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary.

SEC. 3. Be it further resolved, That it is hereby declared to be the intention of the Choctaw nation that the terms of service of the delegates herein mentioned shall expire whenever the whole amount of the "net-proceeds question" is adjusted and settled by Congress, and said delegates are required to render a full and just report of their proceedings and the progress they are making with the claim, from time to time, to the principal chief of this nation.

SEC. 4. Be it further resolved, That this resolution shall take effect and be in force from and after its passage.

Approved November 18, 1867.

This is to certify that the above and foregoing is a true and correct copy of the original act now on file in this office.

Witness my hand and the seal of the Choctaw nation, this 10th day of May, A. D. 1890.

J. B. JACKSON,
Nation- Secretary, Choctaw Nation.

CHAHTA TAMAHA.

Called Session of the General Council, Jan., 1874.

Bill No. 2.

An act entitled "An act revoking a certain contract known as Cochrane'[s] contract and all other contracts made by any Choctaw delegates."

Be it enacted by the general council of the Choctaw nation assembled, That a certain contract known as Cochrane[e]'s contract is ereby revoked and declared null and void.

Be it further enacted, That any and all contract- heretofore entered into with attorneys and claim agents, by any delegates of the Choctaw nation *is* hereby revoked and by this declared null and void by this nation.

Be it further enacted, That all acts or parts of acts coming in any manner in conflict with the provisions of this act be, and the same are hereby, repealed, and that this act take effect from and after its passage.

COLEMAN COLE,
Chairman of the Committee.

Passed the senate February 3rd, 1874.

WILLIAM ROEBUCK,
President of the Senate.

Passed the house February 3rd, 1874.

W. H. HAMPTON, *Speaker.*

350 Approved this 3rd of February, 1874.

WILLIAM BRYANT, *P. C., C. N.*
JONAS WHITE,
Recording Clerk, pro Tem.

This is to certify that the above and foregoing is a true and correct copy from the original act now on file in this office.

Witness my hand and the seal of the Choctaw nation this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

No. 22.

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the general council of the Choctaw nation assembled respectfully showeth:

That an award was made in their favor under the 11th article of *of* the treaty of 1855, by the Senate of the United States, on the 9th of March, 1859, of the net proceeds of their lands ceded by the treaty of 1830;

That the amount due the Choctaw nation under said award was officially reported on the 8th of May, 1860, to be $2,981,247.30, which amount, less $250,000, paid in 1861, has been due the Choctaw nation from the United States since the 9th of March, 1859;

That, in consequence of said award, the Choctaw nation became liable and bound, by the 12th article of the treaty of 1855, to pay the claims of its individual citizens upon the United States;

That the aggregate of said claims was ascertained and reported to the United States Senate in the year 1857, by the delegates authorized to represent the nation, to be $3,671,292 50, being $690,045.90 more than the award;

That since the year 1857, the amount of said claims has largely

increased, swelling the aggregate to nearly five and a half millions of dollars;

That a substantially correct account of the nature and character of the various claims embraced in this aggregate is contained in the letter of *B.* P. Pitchlynn, Choctaw, delegate, to the Secretary of the Treasury, dated July 11, 1874, a copy of which is subjoined;

That the adjudication of said claims, and the obligation to pay them was imposed by the treaty of 1855 exclusively upon the Choctaw nation;

That the settlement with and collections from the United States of the amount of said claims was intrusted more than twenty years ago to the delegation now represented by P. P. Pitchlynn and Peter Folsom, whose powers have been repeatedly reaffirmed, and never revoked;

351 That payment of the amount, due under said award, has been repeatedly applied for and urged by the Choctaw nation through its authorized delegates above referred to;

That the general council beg leave respectfully to add their own urgent solicitations to those above referred to, of the authorized delegates of the nation, to the end that the individual claimants may receive the amounts which have been so long due them.

Signed by order of the senate:

J. B. MOORE,
President of the Senate.

Attest: THOMPSON McKINNEY,
Recording Secretary of the Senate.

October 29, 1874.

Signed by order of the house:

W. W. HAMPTON, *Speaker.*

Attest: WM. P. McCLURE,
Recording Clerk of the House.

Repassed the senate, November 3rd, 1874.

J. B. MOORE,
President of the Senate.

Repassed the house, November 4, 1874.

W. W. HAMPTON, *Speaker.*

This is to certify that the foregoing is a true and correct copy of the original act now on file in this office; said act is also entered in full on the journal of the house as a statute and so numbered.

Witness my hand and the seal of the Choctaw nation this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

No. 1.

An act asking for the payment of the judgment of the Court of Claims of the United States in favor of the Choctaw nation.

Whereas, the Court of Claims of the United States, pursuant to a mandate of the Supreme Court of the United States did, on the 15th day of December, 1886, render a judgment in favor of the Choctaw nation for two million eight hundred and fifty-eight thousand seven hundred and ninety-eight and sixty-two one-hundredths dollars ($2,858,798.62);

And whereas, the Choctaw nation by its delegate, Campbelle Leflore, did, by a memorial presented to Congress, demand from the United States the payment of the said judgment; and whereas the United States have failed to pay said judgment; therefore,

Be it enacted by the general council of the Choctaw nation assembled, That the said memorial demanding an appropriation for the payment of the said judgment is hereby approved and adopted.

2. Be it further enacted, That the Congress of the United States is hereby requested to appropriate the full amount of the said judgment and interest thereon from the date of the rendition
352 thereof, as and for a permanent and continuing appropriation, not subject to lapse, or to be covered into the Treasury of the United States; the same to be paid over from time to time, and in such sums, and at such places, as may be required, directly to the national treasurer of the Choctaw nation, or to such agent or other person as shall be named in the requisition of the proper authorities of the Choctaw nation, for the purpose of making such requisition or requisitions, is hereby declared to be the general council of the Choctaw nation, or such officer or other person as shall be designated and authorized by an act or resolution of the said general council for that purpose; and such requisition or requisitions when made shall be taken and accepted as, and is and are hereby declared to be, the requisition of the proper authorities of the tribe provided for by article XII of the treaty of 1855.

(3.) Be it further enacted, That the foregoing act shall take effect and be in force from and after its passage, and all acts in conflict with this act are hereby repealed, especially an act passed and approved October, A. D. 1873, "defining the duties of the national treasurer in connection with the 'net-proceeds claim.'"

This bill is reported to the general council with the recommendation that it pass.

BENJ. J. WOODS,
Chairman Committee.

February 22, 1888.

Approved February 25, 1888.

T. McKINNEY,
Prin. Chief, C. N.

This is to certify that the above and foregoing is a true and correct copy from the original act now on file in this office.

Witness my hand and the seal of the Choctaw nation this 10th day of May, A. D. 1890.

J. B. JACKSON, [SEAL.]
National Secretary, Choctaw Nation.

Bill No. 2.

An act of the general council of the Choctaw nation to authorize a requisition for the payment of the five per cent. stipulated to be paid to John B. Luce or his representatives or assigns by the contract of the said Luce with the said Choctaw nation, dated the 26th of April, 1881, and approved the 24th of May, 1881, *and approved the 24th of May, 1881*, so far as the same remains unpaid.

Be it enacted by the general council of the Choctaw nation assembled, That Campbell *La*flore, the authorized delegate of the Choctaw nation, or in the event of his death or disability, then Edmund McCurtain be, and he is, hereby authorized and directed for and on behalf of the Choctaw nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment of the five per cent. stipulated to be paid to John B. Luce, or his legal representatives or assigns, in the contract of the said Choctaw nation with
353 the said Luce, dated the 26th of April, 1881, and approved the 24th of May, 1881, and recorded in Miscellaneous Record Book, Indian office, land division, pages 67–70, less thirteen thousand dollars heretofore paid by the Choctaw nation to said Luce, said requisition for said five per cent. less said credit of thirteen thousand dollars to be paid out of any moneys which may be appropriated by the Congress of the United States to pay the judgment of the Court of Claims of the United States in favor of the Choctaw nation, rendered in obedience to a mandate of the Supreme Court, upon the 15th day of December, 1886, for the sum of two million eight hundred and fifty-eight thousand seven hundred and ninety-eight dollars and sixty-two cents ($2,858,798.62).

And this act shall be taken and deemed an authority and request to the proper officers of the United States, that they pay the said five per cent., less the said credit of thirteen thousand dollars, directly to the legal representatives of the said John B. Luce, now deceased, and to his assigns, as follows, to wit:

To Shellabarger and Wilson, of Washington, D. C., fifty thousand dollars ($50,000).

To Titus B. Meigs, of New York city, twenty-four thousand dollars ($24,000).

To the legal representative of the estate of Belden Noble, deceased, late of Washington, D. C., five thousand dollars ($5,000).

To Jeremiah M. Wilson, of Washington, D. C., one thousand two hundred dollars ($[1],200).

To John J. Weed, of Washington, D. C., or his assigns, one thousand two hundred dollars ($1,200).

To Samuel Stevens, of Washington, D. C., six thousand dollars ($6,000).

And to Cornelia P. Luce, the executrix of the last will and testament of the said John B. Luce, deceased, the rest and residue which may reamin of said five per cent, less said credit of thirteen thousand dollars, after the payment and satisfaction of said assignments, such assignments amounting in the aggregate to eightty-seven thousand four hundred d[o]llars ($87,400).

And the amount necessary to the payment and satisfaction of said five per cent., less said credit of thirteen thousand dollars, is hereby appropriated for the purpose of such payment.

The requisition hereinbefore provided for shall be taken and accepted as, and is hereby declared to be, such requisition as is provided for by article XII of the treaty of 1855.

SEC. 2d. That this act shall take effect and be in force an and after its passsge.

Approved February 25, 1888.

This is to certify that the above and foregoing is a true and correct copy of the original act now on file in this office.

Witness my hand and the seal of the Choctaw nation, this 10th day of May, A. D. 1890.

[SEAL.] J. B. JACKSON,
National Secretary, Choctaw Nation.

354 No. 3.

An act to authorize requisition to be made for the payment of the portion of what may be appropriated by Congress in satisfaction of the judgment of the United States Court of Claims in favor of the Choctaw nation.

Be it enacted by the general council of the Choctaw nation assembled, That Campbell Laflore, the authorized delegate of the Choctaw nation, or in the event of his death or inability to act, then Edmund McCurtain, be, and he is hereby, authorized and directed for and on behalf of the Choctaw nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Henry E. McKee of the sum of seven hundred and seventy-eight thousand eight hundred and thirty-nine dollars and sixty-five cents ($728,839.60), to which there shall be added out of whatever there may be appropriated by Congress for interest on said judgment, interest on the sum $714,699.65 out of whatever may be appropriated by Congress in satisfaction of the judgment of the Court of Claims rendered on the fifteenth day of December, A. D. 1886, in favor of the Choctaw nation.

The same to be paid in such sums and at such times and places as shall be requested by said McKee, and such requisitions, when made, shall be taken and accepted as, and is hereby declared to be, such requisition as is required by the twelfth article of the treaty of June 22, 1855.

2. Be it further enacted, That this act take effect and be in force from and after its passage.

BENJ. J. WOODS,
Chairman Committee.

Approved February 25, 1888.

THOMPSON McKINNEY.
Prin. Chief, C. N.

This is to certify that the above and foregoing is a true and correct copy from the original act now on file in this office.

Witness my hand and the seal of the Choctaw nation this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

An act making provision for the payment of the amounts due under the contracts made by the delegation of 1853 with J. B. Luce, Henry E. McKee, and J. G. Blunt and directing the national treasurer to pay to said McKee and Luce the amounts due to each of them under said contract.

Whereas, the authorized delegates of the Choctaw nation, acting under the authority conferred by the acts of the national council, approved November 9th, 1853, and other acts of the national council passed subsequent to said date did, on the 16th day of July, 1870, in good faith, and to secure and protect the best interests of said nation in regard to the net-proceeds claim, enter into a contract
355 with Henry E. McKee and J. G. Blunt for the prosecution of said claim of said nation against the United States for a contingent fee of thirty per cent. of any amount they might recover and collect from the United States for the benefit of the nation on account of said claims; the said Blunt having died, the said McKee associated with himself John B. Luce and other able and experienced lawyers to assist him in the prosecution of said claim under said contract.

And whereas, the said delegates, at the request of said McKee, did, on the 26th day of April, 1881, enter into a separate contract with said John B. Luce for the payment to him of five per cent. of the amount recovered from the United States by the prosecution of said claims, which said five per cent. to be paid to said Luce, was, by a separate agreement of said McKee stipulated should be credited upon the said thirty per cent. agreed to paid to said McKee by the nation under said contract of July 16, 1870;

And whereas, the said McKee, by means of his own labors and the aid and assistance rendered by his associates in the prosecution of said claims, has recovered a judgment against the United States in favor of the Choctaw nation for the sum of two million eight hundred and fifty-eight — hundred — dollars and sixty-two cen[t]s ($2,858,798.62), and the said McKee and his associates are making proper efforts to secure from Congress an appropriation for the payment of said judgment: Now therefore,

Be it enacted by the general council of the Choctaw nation assembled, That the said contracts, and each of them, are hereby acknowledged and recognized as valid and subsisting contracts with the Choctaw nation duly authorized by law, and the services required from said McKee and the said Luce under the said contract having been fully performed by them, they are, by reason of the stipulations of said contract and by said performance by them of said stipulations, entitled to be paid by the Choctaw nation the respective amounts agreed to be paid by the terms of said contract, and the right to such payment out of the proceeds of said judgment, according to the provisions and terms of said contracts, is a right protected by the Choctaw constitution.

SECTION 2. That in order to pay, satisfy, and discharge the obligation of the Choctaw nation to the said McKee and Luce, under the said contracts, there is hereby appropriated out of whatever sum may be appropriated by Congress for the payment of said judgment, thirty per cent. of the amount thereof, which said thirty per cent. is hereby authorized and directed to be paid as follows, to wit:

Five per cent. of the said amount appropriated by Congress for the purpose aforesaid shall be paid to the legal representative or assigns of the said John B. Luce, deceased, less the sum of thirteen thousand dollars paid to the said Luce in his lifetime by the Choctaw nation, and twenty-five per cent. of the said amount appropriated by Congress shall be paid to Henry E. McKee, or to his executors, administrators, or assigns.

SECTION 3. And whereas, by two acts of the general council of said nation, provision has already been made for making
356 requisitions by Campbell Laflore, or in the event of his death or other disability, or his refusal to act, then by Edward McCurtain, for the purpose of making payment as hereinbefore specified, and as in said acts provided for:

No[w], therefore, be it further enacted, That if for any reason there shall be a failure to make payment of the said moneys so specifically provided for in the said act to said parties respectively, as in this act and the said other two acts is provided for, then it shall be the duty of the national treasurer of said Choctaw nation to make requisitions in favor of said parties, respectively, as provided for in the said two acts for the payment of them respectively, of said sums named in said acts, and said requisition-, when made, shall be taken to be the requisitions contemplated and required by article 12 of the treaty of 1855.

And as it cannot be known in what form provisions will hereafter be made by Congress for the payment of the said judgment and interest, it is further enacted that if the said appropriations is so made that payment cannot be made as contemplated by said two acts above named, and so made as to require the payment of the said money into the treasury of the Choctaw nation, or so as to require its payment otherwise than as contemplated in said two acts of said council heretofore passed, then it is hereby made the business of the national treasurer of said nation to pay, and he is hereby directed

to pay or cause to be paid (by drawing such checks, drafts, or warrants, or by doing such other acts as may be necessary) to the said parties, respectively, or to their legal representatives or assigns, the several sums of money hereinbefore and in the said other two acts referred to and required to be paid, it being the intention of said general council, by said acts and by this act, to provide for and to secure to the said parties respectively the sums due to them respectively, as provided in this and said other two acts, and to provide for making such payments in conformity with and obedience to whatever form or mode of payment may be rendered necessary by said appropriation by act of Congress yet to be made.

SEC. 4. That the sum of fourteen thousand one hundred and seventy dollars shown to be due the late John T. Cochrane, deceased, by an act of the general council of November 1st, 1861, is hereby appropriated out of any money received from the United States in payment of said judgment, and the payment of said amount shall be made to said Henry E. McKee in the same manner and at the same time that the payment of the said twenty-five per cent. shall be made to said McKee as herein authorized and directed.

SECTION 5. That the payment herein directed to be made shall, when made, either under this act or said other two acts hereinbefore referred to, be taken and accepted as full and complete payment and final discharge and satisfaction of all the contracts and obligations of the Choctaw nation to any and all attorneys for services rendered to the nation in the prosecution of said claim against the United States.

SEC. 6. That this act take effect and be in force from and after its passage.

357 Approved Feb. 25, 1888.

BENJ. J. WOODS,
Chairman Committee.
THOMPSON McKINNEY,
Prin. Chief, C. N.

This is to certify that the above and foregoing is a true and correct copy from the original acts now on file in this office.

Witness my hand and the seal of the Choctaw nation, this 10th day of May, A. D. 1890.

[SEAL.]

J. B. JACKSON,
Nation. Secretary, Choctaw Nation.

John J. Weed, attorney and counsellor at law, room No. 92, Corcoran building.

WASHINGTON, D. C., *Feb'y* 12, 1888.

Col. Campbell Le Flore, Fort Smith, Ark.

MY DEAR SIR: Mr. McKee has suggested to me that the Choctaw council might desire some assurance from the other attorneys who have claims against the "net-proceeds claim" for services alleged to have been rendered by them, of their willingness to trust McKee for their money, and not annoy and harrass the Choctaws with

claims and suits, if he, McKee, should fail to settle with them to their satisfaction, as his contract for thirty per cent. compels him to do. So far as I have ever heard everybody is willing to trust McKee if the Choctaws appropriate the thirty per cent. which his contract calls for. So far as I know, or have ever heard, every lawyer who has ever rendered service, or pretends to have rendered service, in regard to the "net-proceeds claim" expects to get his pay out of the thirty per cent., and to get it through McKee. For myself, I expect to be paid by McKee out of his thirty per cent. I have no claim against the Choctaw nation if McKee's thirty per cent. is paid, even if he should not pay me, but of this I have not the slightest doubt.

McKee's contract requires him to stand between the Choctaws and "other atttorneys who have rendered service." He would be liable to suit in the courts here and elsewhere, whereever he could be found, if he should neglect or fail to carry out his agreement with the Choctaws to settle and adjust the claims of other attorneys who have rendered service, upon principles of equity and justice. The Choctaws would not be liable to any such *such* anywhere, either here or in the Choctaw nation. The only attorneys who have rendered services in the prosecution of the net-proceeds claim, or who pretend to have rendered such service, and are not named in McKee's contract, are as follows:

1. Shellabarger & Wilson, whose fees are secured out of the five (5) per cent. payable to John B. Luce.

2. Gen. J. W. Denver, who represents himself and Gen'l Albert Pike. I understand they are willing to trust McKee, and look only to his 30 per cent. for payment.

358 3. Judge Cuppy, deceased. He had no contract with any one but McKee, and his executor looks only to McKee for payment.

4. My own fees are to be paid by McKee, and I never expected them from any other source.

John T. Cochrane, deceased. Mr. McKee agrees in his contract to pay the widow of John T. Cochrane, deceased, five per cent. out of said thirty per cent., and I understand this arrangement is satisfactory, not only to Mrs. Cochrane, but to Mr. Cochrane's executor.

6. John H. B. Latrobe. He looks to Mr. McPherson, executor of Mr. Cochrane, for his fee. Whatever sum Mr. Latrobe or Mr. Cochrane's estate gets comes out of Mr. McKee's thirty per cent.

7. Ward H. Lamon claims as surviving partner of Hon. J. F. Black, deceased. It is a matter within my own knowledge that he asserts no claims against any other fund, or against the Choctaws, except the thirty per cent. covered by Mr. McKee's contract; and he expects and insists that whatever he gets shall come out of Mr. McKee's thirty per cent., and not out of the Choctaws.

If I could in any way get the ear and confidence of your Choctaw friends, I would assure them that the shortest and safest road, and the one most free from every possible complication, is for them to trust McKee as he has for so many years trusted them; he suggests to them no legislation that is not for their interest and suc-

cess; he will lead them into no pitfalls or difficulties of any kind, if, in the exercise of their usual wisdom and good sense, the general council shall enact the statutes which have been carefully prepared not only for his own protection but for that of the Choctaws.

Yours truly, JNO. J. WEED.

The foregoing statement of the case by Mr. Weed is just and fair, and I assent to the proposition in behalf of myself and Gen. Albert Pike.

J. W. DENVER.

I have carefully compared the foregoing copy of the letter of John J. Weed and J. W. Denver, and I hereby certify that it is a correct copy or transcript of the original now on file in the archives of the Choctaw nation of Indians, among the papers of the "net-proceeds claim."

Witness my hand, and the seal of said nation affixed, this 10th day of May, A. D. 1890.

J. B. JACKSON,
National Secretary, Choctaw Nation.

BOGGY DEPOT, C. N., *March 2d*, 1867.

Col. PITCHLYNN: Authority given you and other members of the old delegation by me was "to protect and defend all and every right and interest of the Choctaws arising under treaty stipulations;" and it would not do to sell or transfer the "net-proceed" claims. That would at once more or less destroy the Choctaw right and interest, which you were authorized by me to protect.

359 The death of Mr. Cochrane, no doubt, materially affects the business managers in regard to the "net-proceed" claims; but it was understood by the late delegation that Mr. Latrobe was equal partner with the late Mr. Cochrane in prosecuting all claims of the Choctaws. Therefore you have an able counsellor to aid you. Mr. Cochrane's executor can only act in place of Mr. Cochrane in prosecuting the business with Mr. Latrobe, including the "net-proceed" claim business. As Mr. Latrobe was recognized partner of Mr. Cochrane, as well understood by the late delegation, the said Choctaw delegation recognized & endorsed the old contract between Mr. Cochrane and former delegation to prosecute the "net-proceed" claims, the back-annuities claim, &c.

Should the "net-proceed" claims be prosecuted as a separate claim, other claims, such as back-annuity, &c, would either be damaged or entirely ignored by Congress. Hence all claims of the Choctaws should be presented together by united action of the attorneys, which was said to be their expressed intention, as mentioned to me by the late lamented Mr. Cochrane.

Most respectfully, your ob't serv't,

ALLEN WRIGHT,
P. C. C. N.

EXECUTIVE OFFICE,
BOGGY DEPOT, C. N., *March 28th*, 1867.

Messrs. Pitchlynn & I. Folsom, Choctaw delegates:

An unofficial letter under date of the 4th inst. from Mr. Israel Folsom has been received, in which I am informed that an appropriation for the Choctaws under a deficiency bill has been defeated. From all the sources of information I can get in regard to that particular business, that if that particular section touching the Choctaw business had not been "struck out," it would have relinquished all claims of the Choctaws, both national and individual, brought against the Government of the United States, prior to the treaty ratified June 28th, 1866.

It seems in order to get net-proceed claim through all and every interest of the Choctaws have to be sacrificed. And an attorney engaged by a written contract by late delegation which was approved by the last general council of the Choctaw nation, was ignored by you, and employed a new set of speculators who know no Choctaw interest but their own, who I think will surely ruin the whole Choctaw business, if they are allowed to continue to manage the business as they have done with your approbation.

The commission given you by me was "to protect and defend all and every right and interest of the Choctaws under treaty stipulations;" but from the extract of the bill I have seen that they were all given away or sacrificed contrary to instruction. Fearing this result I wrote you on the 9th inst. informing you that Hon. Mr. Latrobe is the acknowledged attorney of the Choctaw nation. And deprecating also the employment of any separate attorney to institute a suit against the Gov't of the United States the "net-
360 proceed claim" as a separate claim from that of Mr. Latrobe. But the executor of Mr. J. T. Cochrane's estate should only act with Mr. Latrobe in prosecuting the claims. Every interest and right of the Choctaw people including the net-proceed claim were all secured by the treaty of 1866, with the assistance and counsel of Mr. Latrobe, and he must continue to manage the whole business until they are consummated, as contemplated by contract already referred to, death and lawful reasons excepted.

Unless that is done, and should you continue to press the net-proceeds claim as a separate business from all those secured by the treaty of 1866, to the injury of the nation pecuniarily, I shall be obliged to revoke your commission and request & authorize the council to declare the old power of attorney and former contract with Mr. Cochrane null and void. This does not by any means *to* deprive you or other parties interested in the business, including Mr. Cochrane's estate, but depriving you only of the right of employing new attorneys, so that the whole Choctaw business would be more secure, which, in my opinion, is very essential.

Most respectfully, your ob't serv't,

ALLEN WRIGHT,
P. C. C. N.

EXECUTIVE OFFICE,
BOGGY DEPOT, C. N., *March 29th*, 1867.

Hon. J. H. B. Latrobe.

DEAR SIR: I would acknowledge the receipt of two letters before, and then again by yesterday's mail which informed me the net-proceed claim was pressed into the deficiency bill to the injury of all other claims of the Choctaws, and got defeated.

For all the above-mentioned letters you will please accept my hearty thanks. And enclosed you will find a copy of the letter which I now send to Messrs. Pitchlynn & I. Folsom. Just as soon as I become acquainted with the difficulty existing between the old delegation and yourself as our acknowledged attorney to carry out our business—I wrote some time ago to our delegation informing them that you are our attorney, as approved by last Choctaw council. Now I send them another. Therefore, if they will not recognize you as the attorney of the Choctaw nation after a full explanation to them, you will please forthwith notify me.

As the chief of the nation and *have* the right to speak for the nation in the absence of the legislative council, I cannot give my consent to have the Hon. Luke Lea as the attorney of the Choctaw nation.

I do not yet understand upon what ground he claims the right to act as an attorney for Choctaw interests. From what I can gather, he claims the right to represent Mr. Cochrane's estate as his executor. If he is an executor he has only to execute Mr. Cochrane's will or settle up his business, but contrary to reason, I know not what law says on the subject, for him to try to carry out Mr. Cochrane's contract. Did not Mr. Cochrane's contract cease to be binding when he died, or in another word, died with him? But
361 full justice should be done to Mr. Cochrane's estate—pay for services rendered. But inasmuch as you, Mr. Cochrane, and Gen'l Cooper were authorized to speak for the Choctaw business, the surviving parties must manage the whole business to the best interest of the Choctaw people. If Mr. L. Lea wishes to have the say-so in the business, he must come in on Mr. Cochrane's acc't and help, but not to control or manage the business.

Please write me on the receipt of this.

Truly yours,

ALLEN WRIGHT,
Prin. Ch'f, Choc. Nation.

CHOCTAW NATION, EXECUTIVE OFFICE,
BOGGY DEPOT, *July 15th*, 1867.

To the Honorable J. S. Black, Washington City, D. C.

SIR: I have received your letter of the 2nd May, and presuming that I can best reply to it by answering the questions with which it concludes, beg leave to make the following statement, which, without answering each question separately, will be found to embrace them all.

There was a contract made between the late Mr. John T. Cochrane and the Choctaw nation for the prosecution of what is known as the "net-proceeds" claim. This contract, which was based on the

confidence of the nation in Mr. Cochrane personally, and on their estimate of the value of his personal services, was beyond their control while he lived and was able to perform the duties which it imposed upon him, and even after his death his representatives would be entitled to compensation for the services actually rendered by him; but the nation recognized in Mr. Cochrane no right to determine, by his will, or by instructions to his executor, or in the executor himself, who should perform for the nation those duties which he stipulated to perform in person. So far as the contract with Mr. Cochrane is concerned, or can affect the questions you ask, you have it before you and it must speak for itself.

You say, "if it be true that there was some kind of secret understanding between Cochrane and Latrobe unknown to the rest of us, and denied by Cochrane's representative, do you regard that as a good reason for your interference?"

In reply to this question, I have to say, that there was an understanding between Cochrane and Latrobe in regard to the "net-proceeds" claim, but that it was not a secret one; on the contrary, it was well known, spoken of by Mr. Cochrane unreservedly; and that when the Choctaw delegation, of which I was a member, of 1866, confirmed Mr. Cochrane's contract, it was with the belief that Mr. Latrobe and General Cooper were equally interested with Mr. Cochrane in the net-proceeds claim. When the delegation come to Washington after the war, they employed Mr. Latrobe and in the course of the negotiation of the treaty of 1866, on which the net-proceeds claim was believed to depend, the arrangement was made between Mr. Cochrane, Mr. Latrobe, and General Cooper.

362 Knowing this to be the fact, I looked to Mr. Latrobe and General Cooper to take up the business on Mr. Cochrane's death. I knew they enjoyed his perfect confidence in his lifetime, and our delegation were satisfied with their ability to do us service. My action, therefore, has not been had on a one-sided statement, but upon my own personal knowledge of the facts. So far as I understand Mr. Latrobe's action, in which I include General Cooper's also, it has not been upon a mere claim set up by him, but as the agent of the nation, made so by an agreement with Mr. Cochrane in his lifetime, which the Choctaw delegates, having full power to do so, sanctioned, and which I have since have no reason to be dissatisfied with.

So far as your own action in this matter has gone, in accepting the case put into your hands as you state in your letter, I cannot presume to express any opinion. Your character in the profession of the law and your ability, which is fully recognized, certainly would make it impossible for me willingly to believe that it was in any respect improper. Still, while I say this, I am not to be understood as adopting what has been done in your regard in the premises—the powers of Col. Pitchlynn and Mr. Folsom gave them no authority whatever to act in any way inconsistent with the relations established by Mr. Cochrane himself in his lifetime with Messrs. Latrobe and Cooper.

With great respect, your most ob't serv't,

ALLEN WRIGHT, *P. P. C. N.*

This agreement made and entered into on this 19th day of October, A. D. 1868, by and between Allen Wright, James Riley, John Page, Alfred Wade, of the delegation of 1866, of the first part, and P. P. Pitchlynn, Isreal Folsom, Samuel Garland, and Peter Folsom, of the delegation of 1853, of the second part, all of the Choctaw nation, witnesseth:

That the said parties of the first part doth hereby covenant, agree, and promise that they will use all their influence, both personally and officially, to aid and assist said parties of the second part in securing and having paid them all amounts due them under a certain contract made and entered into on the 21st day of November, A. D. 1855, by and between said parties of the second part and the chiefs of the Choctaw nation.

And the said parties of the first part further promise and agree that they will give their aid, both personally and officially, in carrying into effect a certain contract entered into on the 13th day of February, A. D. 1855, by and between said parties of the second part and John T. Cochrane, Esq., now deceased, for the prosecution of the so-called "nett-proceeds claim" against the Government of the United States, and further promise and agree that the corapensation or fee of 20 per cent. allowed said parties of the second part under said contract of November 21st, 1855, shall not in any way be interferred with, but shall be fully secured and paid to said parties of the second part, their heirs or assigns, and it is further agreed that the parties of the first part will use all their influ-
363–368 ence and aid, both personally and officially, in carrying into effect all arrangements and subcontracts said J. T. Cochrane may have made under said contract of February 13, 1855, and to see that the compensation or fee of 30 per cent. allowed him by said contract shall be faithfully carried out and the same fully paid.

And the said parties of the second part doth hereby covenant and agree on their part, that they will, both personally and officially, sustain the said parties of the first part in all their arrangements and contracts that they have entered into with J. H. B. Latrobe, Esq.; that they will give their aid and influence, both personally and officially, in having secured to them 20 per cent. of all moneys recovered under said contracts, as far as said contracts do not come in conflict or interfere with the contracts that have been made by said parties of the second part for the prosecution of the Choctaw "nett-proceeds claim." And further promise and agree to use their influence in having Allen Wright relieved from all liability under his official bond as national treasurer growing out of certain payments made under said contracts with said J. H. B. Latrobe. The words of this agreement are to be construed most liberally, and no advantage is to be taken by either of said contracting parties of any *in*technicalities therein found. And we mutually promise to sustain each other and work harmoniously together to accomplish our mutual interests, and the interest and welfare of the Choctaw nation.

In testimony whereof, we have hereunto set our hands and seals the day and year first before written, "done in duplicate."

P. P. PITCHLYNN.	[SEAL.]
ISRAEL FOLSOM.	[SEAL.]
SAM'L GARLAND.	[SEAL.]
PETER FOLSOM.	[SEAL.]
ALLEN WRIGHT.	[SEAL.]
JAMES RILEY.	[SEAL.]
JOHN PAGE.	[SEAL.]
ALFRED WADE.	[SEAL.]

Signed, sealed, and delivered in presence of—
C. G. LOMBARDI.

* * * * * * *

369 Filed January 27, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, in General Term, January, 1891.

JOHN H. B. LATROBE, Complainant, *vs.* HENRY E. MCKEE *et als.*, Defendants. } Eq. No. 11248, Doc. 28.

Motion to Suppress Testimony.

And now comes the defendant Henry E. McKee, by his solicitors, and moves the court to suppress, strike from the record, and exclude as evidence on the hearing of the above-entitled cause the following depositions, affidavits, exhibits, and documents taken and printed as and to be offered and read in evidence on behalf of the complainant in the above-entitled cause, to wit:

1. Deposition of John H. B. Latrobe, Record, pp. 238–281.
2. Deposition of R. D. Barclay, Record, pp. 286–319.
3. Deposition of John D. McPherson, Record, pp. 329, 330, 332–338.
4. Deposition of Thomas Wilson, Record, pp. 522–534.
5. Exhibits No. 1, 2, and 3, offered in evidence on behalf of complainant, Record, pp. 534–544.
6. Deposition of George Taylor, Record, pp. 544–549.
7. Message of Allen Wright, principal chief Choctaw nation, to the Choctaw council, October, 1867, Record, pp. 951–955.
8. Second deposition of John D. McPherson, Record, pp. 556–568.
9. Deposition of John J. Weed, Record, pp. 575–577.
10. Deposition of Ella C. Mix, Record, pp. 580–583.

370 11. Deposition of Edward M. Mix, Record, pp. 583–587.

12. Deposition of Sarah M. McDonal and exhibits attached thereto, Record, pp. 587–605.
13. Deposition of Enoch Totten, Record, pp. 605, 606.
14. Deposition of Adam G. Morris, Record, pp. 606–612.
15. Second deposition of John H. B. Latrobe, Record, pp. 612–623.

16. Letters from John H. B. Latrobe and from D. H. Cooper to Latrobe, Record, pp. 624–634.

17. Exhibits "M, N, R, Q," Record, pp. 664–676.

18. Exhibits "M, N, R, Q," Record, pp. 676, 677.

19. Exhibits 1, 2, 3, 4, 5, 6, offered in evidence by complainant, Record, pp. 678–688.

20. Affidavit of Thomas D. Ainsworth, Record, pp. 691–693.

21. Affidavit of Coleman E. Nelson, Record, with Exhibits A and B, thereto attached, Record, pp. 695–701.

22. Affidavit of John M. Hodges, Record, pp. 701, 703.

23. Affidavit of Julius C. Folsom, Record, pp. 703–704.

24. Affidavit of Charles E. Hovey and letters thereto attached, Record, pp. 704–706.

25. Act of Choctaw national council approved October 30, 1873, Record, p. 707.

26. Letter of John J. Weed to Campbell Le Flore, Record, pp. 718, 719.

27. Letters of Allen Wright to P. P. Pitchlynn, to P. P. Pitchlynn and I. Folsom, to John H. B. Latrobe, and to J. S. Black, Record, pp. 719–723.

28. Agreement between the old or Pitchlynn delegation of 1853 and the new or treaty delegation of 1866, Record, pp. 723, 724.

371–374 This motion as to each of the said depositions, affidavits, letters, papers, and documents above designated is made, urged, and insisted on by the defendant McKee because and for the reasons following, to wit:

1st. That the complainant's bill nor any paragraph thereof states, avers, or sets forth any claim, demand, or cause of action within the equitable jurisdiction of this court.

2nd. That the said depositions, affidavits, letters, papers, and documents are and each of them is irrelevant, immaterial, and incompetent to prove or establish or to in any manner tend to prove or establich any claim, demand, or cause of action stated, set forth, or averred by the complainant against the defendant, McKee, in his said bill of complaint, or in any paragraph thereof, filed herein by the complainant against the said defendant, McKee.

3rd. Because the said testimony above specified relates to matters not in issue in the pleadings.

4th. Because the said testimony relates to matters that are admitted in the pleadings.

5th. Because the said testimony relates to matters which, although in issue, are immaterial and therefore do not call for the decision of the court.

6th. Because the said testimony is needlessly prolix and often repeated in the record.

JOHN J. WEED,
JEFF. CHANDLER,
B. F. RICE, &
M. W. CHOLLAR,
Solicitors for the Def't, McKee.

* * * * * * *

375 Filed May 27, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Sitting in General Term, the 27th Day of May, A. D. 1891.

JOHN H. B. LATROBE, Complainant,
vs.
HENRY E. MCKEE *et al.*, Defendants. } No. 11248, Eq. Doc. 28.

Ordered that the motion filed by the complainant at the hearing of the cause, in open court, on the 11th day of February, 1891, for leave to amend the original bill herein be, and the same hereby is, overruled.

Ordered further that the motion filed by the complainant at the hearing of the cause, in open court, on the 11th day of February, 1891, to strike out a portion of Exhibit B to the depositions of Ingalls and Avdem and all of Exhibit H be, and the same hereby is, overruled.

Ordered further that the motion filed by the defendant Henry E. McKee at the hearing of the cause, in open court, on the 28th of January, 1891, to strike out and suppress the complainant's testimony be, and the same is hereby, overruled.

Ordered *nunc pro tunc.*

E. F. BINGHAM, *C. J.*

376 In the Supreme Court of the District of Columbia, in General Term.

WARD H. LAMON and CHAUNCY F. BLACK
vs.
HENRY E. MCKEE *et als.* } In Equity. No. 11238, Doc. 28.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } In Equity. No. 11248.

HENRY E. MCKEE
vs.
ELLEN COCHRANE *et als.* } In Equity. No. 11262.

Opinion of the Court.

Mr. Justice JAMES:

I am sorry that the chief justice has been unwell and unable to deliver the opinion of the court in these cases, but I will state the conclusions of the court. Not having expected to prepare the opinion, I have not done so, and I confine myself merely to stating the conclusions that the court has reached.

It was claimed on the part of McKee, in the first place, that there was not rightly any amended or supplemental bill here; that the original bill was substantially and in its effect a bill against the Choctaws, of which the court had no jurisdiction.

Our conclusion is that it was not simply a bill filed to control the

money of the Choctaws, but that it was also a bill against McKee, based on this theory—that he personally was about to get
377 hold of the money of the Choctaws, and if he got their money he would at the same time or in consequence get possession, under the name of his fee, of the fund out of which these parties were to be paid. They claimed that that made a trust at that date, dating from that time; but the point that we make here is that it was a bill, though faulty, against McKee personally and individually, to keep him from getting possession of the fund to which they would have to look in some way for their compensation.

As to the supplemental bill, we have concluded and hold as a matter of law that the parties substantially appeared to the supplemental bill in the subsequent proceedings before the court.

Now, as to the basis on which the claim- stand. I will speak first of Lamon's. His argument was that this was a trust, and that he was one of the *cestui que trust*. We understand that that doctrine is applied when the money in question belongs in equity to the complainant that has been improperly gotton and held by the defendant. The complainant would have to stand upon his title to it as a person having a contract, and that is the only way in which he could show that that money is a fund to pay fees with belonging to him. We think that he has not shown that. The contract that he talked about was made with Black, and it has been held that if a party has a personal right, is personally retained, that he is the one who must look to his remedy. He was not employed by that contract, and it would further involve the doctrine that the contract with Black, even if it were a party, survives down to the time that the money was gotton hold of by McKee. In short, our conclusions in this case are supposed to be explained in a more
378 elaborate opinion hereafter, but our conclusion is that he must stand on the express trust, which, it is alleged, can be gathered from McKee's own contract with the Indians in 1870, and along with it the Choctaw statute of 1888. It is from the two taken together that the trust is derived, and that we have concluded is Mr. Lamon's position. Now, the question is, what does that trust cover? We are of the opinion that we must take the two statutes together, the statute and the contract together, to find out, and our conclusions as to that is that Mr. Lamon, if he has any claim, *it* is not as a party to the written contract with Black and the Indians, but by reason of another legitimate employment in the case, and he has it as one of the parties provided for in the express trust. We have further concluded that he showed by himself that, in equity, he is covered by means of his arrangement with Black. There was an assignment to him of a certain interest, and he derives through him to that extent and in that manner. Black was subject to lose all of his rights by going out of the case, and so was Lamon, unless they have been referred to as having been retained and specially recognized as *cestui que trust*.

It seems that Lamon first took this assignment, and besides that he worked, did certain work, though I need not undertake now to say what it was, but he had a legitimate connection with Black at

the time before Black went out of his contract, and he was understood by the Indians to be co-operating with Black and to be working with him.

We recognize him as having an interest which he may maintain in this suit. We have observed that in 1874 the Choctaws distinctly annulled the contract with Black and especially named the
379 Cochrane contract. We have observed also through the case that they always speak of the Black contract by that name, and we have no doubt that the intention in 1874 was to revoke and annul the Black contract. The Cochrane contract was the other name for that. It was a comprehensive thing. Now, the question is, not whether they had any right to annul the contract, but what they were talking about, and they said that provision was to be made for people who had worked on the contracts. Our conclusion is that the Choctaws in defining the trust did not mean that people whose contracts they had annulled were to come within the trust. Well, it might be said that they were not annulled in any express terms, but that was the effect of those broad words of McKee's contract. So they did, but they set up again so that his contract did not stand annulled in the end, and the rest were left also. I do not mean to say that we decide that those contracts were annulled, but we are not supposed to refer to anything but services rendered down to the time that they annulled the contract—at the time that they annulled the Cochrane contract. So that we shall limit the services for which Lamon is to be recognized in this trust to the period between the making of the Black contract and their cancelling with Lamon his contract as a party in interest in that contract in 1874. Now, we cannot get at the value of his services, and we will have, therefore, to refer that question to the auditor. We cannot determine the value of his services. He states that he wrote a good deal, made memorials, and so on, but we cannot determine the value of them. We are rather inclined to the idea that a proper estimate should be based upon the estimate of the value of Mr. Lamon's time. He seems to say that he occupied the most of his time, and we think the proper standard would be to es-
380 timate his time, considering who he was, between the making of the contract in 1867 and the absolute determination of it by the Choctaws, as it is claimed, in 1874. The value of the particular things that he did seem- to us unascertainable, but we suppose that Mr. Lamon's time can be valued, and that time can be ascertained, whether he threw it away or helped their cause any or not. That question may be referred.

As to Latrobe's interest, we think that he stood differently. He was employed himself, and he did not come in under Black, but had an independent position, and we feel that we could estimate the value of his services, so far as we propose to do it. He himself fixed the value of his services by an arrangement that he made with McPherson at $75,000, and we are of the opinion that he shows merits up to that amount, and we propose to allow that sum, and that is the difference — his case and Lamon's. We cannot make Lamon's out, but we think we are authorized to make out Latrobe's,

and we recognize him as being entitled to $75,000. He may be entitled to more, but we think that he has shown himself properly to be paid that amount.

Now, as to the interpleader case. It was claimed that the intention of the Indians was to give the whole of the money that has been deposited here to Mrs. Cochrane. Our view of the matter is that each and every dollar of that money was charged, if at all, with any trust—that if there was any trust at all each and every dollar was under the charge; that it was not in the power of McKee to disengage any particular dollar or any particular sum of money from the charge, and we conclude that about a hundred and sixty-odd thousand dollars remains subject to the charge just as it
381 would be if it had remained in his hands. That is one of the charges. Now, one of the charges was fourteen thousand dollars, distinctly intended for the estate of Cochrane, and that should go to his representatives, the legal representatives of Cochrane. Part of it seems to have been assigned, and that part goes to the assignee. I think it was only about seven thousand dollars, leaving about seven thousand dollars. The assignee got it by paying less money than that, but that appears to have been assigned, so that half of it goes to the estate as the *cestui que trust*. and half to the assignee. As to the rest, the question whether there was a priority of Lamon and Latrobe over Mrs. Cochrane, we have concluded that they must stand on an equal footing, and that as to that money it goes *pro rata*, the fourteen thousand dollars having been taken out, to this estate and the assignee; the balance goes *pro rata* to Mrs. Cochrane and Latrobe and to whatever may be found to be the amount due Lamon. That, I think, disposes of the three cases.

I have named those that we have admitted to be entitled to claim, but I do not discuss the parties that have made no showing. We do not recognize Scott, as he does not come under the definition of this trust. He had not done anything; he bought in and undertook to occupy somebody else's shoes.

At this date we will not undertake to say what right he may have against Lamon; we will allow Lamon what the auditor says he may have.

My attention has been called to another matter that I had omitted. The auditor will be instructed, when we come to draw an order, to look to the value of Mr. Lamon's services or of his time without reference to what may be called his contingent
382 fee; that is not measured; that is shut out. They have claimed all through the argument that those contracts treated them as if they remained in force after McKee went to work. We do not recognize those as contracts that survived and gave them rights down to the time the money was obtained. Mr. Lamon's services are not to be measured as assignees, say, of one-third of a contingent fee. The value of his time or his services will be measured without reference to an original contract, but upon the value of the time employed and services rendered, and it is on that very

basis that we have allowed Mr. Latrobe seventy-five thousand dollars.

In this same connection we have concluded that the moneys that may have been found to have been legitimately expended prior to 1874, what has been paid out, if the auditor finds that any has been legitimately expended, is to come in. It is only for money that may have been paid out before 1874, as we do not recognize and cannot perceive that he would have any claim against McKee or the Choctaws for anything laid out after that period.

Now, the framing of this order will be a matter which will have to be considered by the court.

Gen'l HENKLE: Let me inquire of your honor one thing. Your honor said, as I understood, that the fund in court was to be divided *pro rata* between Mrs. Cochrane, Latrobe, and whatever may be found to go to Lamon. Now, I suppose, from what your honor said that seventy-five thousand dollars was a fixed sum in favor of Latrobe.

Justice JAMES: We are satisfied that he is entitled to that amount, and we approve his claim to that extent.

Gen'l HENKLE: Do I understand, your honor, that for that
383 amount there is to be a judgment against McKee? And then, if an equal amount should be made for Lamon, what, then, would become of Mrs. Cochrane?

Justice JAMES: If there is any balance due, of course, it will be a judgement against McKee. We are to make an order for a *pro rata* division. As I understand it, we are to make a decree against McKee for the amount, and that is to be satisfied *pro rata*.

Gen'l HENKLE: What part of that fund comes to my client?

Justice JAMES: We put down Latrobe at seventy-five thousand dollars and put down Lamon as *x*, and Mrs. Cochrane gets five per cent. of this amount of money—one hundred and forty-seven thousand dollars. Those claims represent one hundred and forty-seven thousand dollars and seventy-five thousand dollars and *x*.

Mr. COLEMAN: The fund in court is to be divided, and then there is to be a judgement over for the balance—that is to say, the fund in court will be *pro rata* divided among the three?

Mr. Justice JAMES: As to the amount that Lamon is entitled to, we cannot make any judgement, as we have not the matter before us to do it on. We will make a decree now for seventy-five thousand dollars.

Mr. TOTTEN: In the Latrobe case?

Mr. Justice JAMES: Yes.

Gen'l HENKLE: Suppose that McKee should pay this judgement in favor of Latrobe, then what becomes of the fund in court?

Mr. Justice JAMES: That is to be paid.

Gen'l HENKLE: If he should pay that, then Latrobe does
384 not take his share in this money in court.

Mr. TOTTEN: He will go right out if it is paid.

Gen'l HENKLE: If McKee should also pay the Lamon judgement, then Mrs. Cochrane would take it all?

Mr. Justice JAMES: We cannot make a decree now as to what

any of these parties are to get out of this fund in court. After all, we are only stating what we are going to do when we can state the amount due Lamon. We settle the Latrobe case, because it is no part of this trust.

Mr. CARLISLE: Then your honor will make a decree as to the amount due Latrobe without any further proceedings. We were brought into the interpleader against our will. We were not proper parties to it, and, as I understand the decision of the court, it takes notice of the claim of the assignee of Cochrane and provides for that, and there will be a decree for the immediate payment of the amount due Latrobe.

Mr. FLIPPEN: One-half of that fund belongs to the assignee and will be paid to him.

Mr. CHIEF JUSTICE: Yes; the assignee.

Mr. CARLISLE: I make no question about that.

Mr. TOTTEN: The court will sign a decree in favor of Latrobe against McKee for seventy-five thousand dollars, and if we collect that to-morrow that is the end of the Latrobe litigation; but if we cannot collect it we will take our *pro rata* share of the fund in court.

385 Chief Justice BINGHAM: I believe that all the parties who are interested or who will become interested in the amount fixed for the compensation of complainant, Lamon, are present. If that is true, then I wish to say to the counsel that upon reflection since the announcement of the decision by Justice James, in consultation between Justice James and myself, we have concluded that unless we hear some objection which may seem sufficient from counsel for not doing so that we will proceed to find an amount which we think will be proper compensation for Lamon. We are induced to do this from several considerations, and one is that it would probably subserve the convenience of the parties very much to have a final decision upon that question now. It will facilitate an appeal, if one is to be taken to the Supreme Court of the United States, with respect to that particular part of the decision of the court, probably, although we have not thought specially of that, and an appeal might be taken by counsel generally in the case upon the decree as announced by counsel the other morning; but if there be a doubt about that, it would settle that doubt, and then again it will prevent a delay which will necessarily result in going to the auditor, it may be, in the taking of further testimony. Upon a reconsideration of the matter, believing that the circumstance that are pertinent to a determination of the amount that will be given to Lamon are perhaps now as well developed by the testimony already taken as they would be by any further testimony, we have thought best to make this statement. The cause perhaps of our making the announcement that we did the other day was from a suggestion to our minds that the theory as to the amount
386 that would probably go to Mr. Lamon for his compensation was upon a false basis—that it was upon the theory that he was interested in a contingent fee and not in the successful issue of the case, estimating what would under such circumstances be consid-

ered the whole amount that was paid as a fee, and upon the theory that he was working upon a contingent fee, and upon a contract which he could himself avail himself of in this action as to what under such circumstances would be the proper compensation to be paid to him. This, as we announced the other day, we think is not the proper basis; but it is upon a *quantum meruit*. What were his services worth just as they were rendered in this case, after the making of the contract between Black and Cochrane's executor and the Choctaw people and up to the year 1874, when there was a recision on the part of the Choctaw nation of the Cochrane contract and all other contracts for services, and, that being the limit of time in which we think that he would be entitled to recover for his services, what would be the proper compensation for his services, the actual value of his services, looking to his ability to render them; and what would be the value of his services in his occupation as an attorney-at law, looking to what might be the expectant result from his services, looking to their importance rather to the case in which he was employed, not to its successful result either? By looking to a successful result that, perhaps, may be taken where his efforts were crowned with success, but not successfully by means of his legal services. Now, if there be no objection on the part of the counsel, which we deem sufficient, we propose to announce our conclusions as to the value of his services. We are lead
387 somewhat to the conclusion that is this case go to the auditor and an attempt be made to take further testimony the probability is that the testimony would be about as indefinite and unsatisfactory then as it is now. Of course the testimony would be confined. The further testimony taken would be simply as to the value of his services and limited, of course, by the direction to the auditor to allow upon the theory which I have already mentioned.

Mr. COLEMAN: We make no objection.

Mr. HENKLE: We are quite content so far as Mrs. Cochrane is concerned.

Mr. WEED: We are quite willing that the court should announce its conclusion upon that subject, of course, without waiving any rights, giving consent that the court may discharge the functions of an auditor itself.

Mr. PHILLIPS: I announce the same on behalf of Scott's executors.

Chief Justice BINGHAM: The court have concluded that the sum of $35,000 will be the compensation of Mr. Lamon under the circumstances. That will then be the decree of the court.

Mr. WILSON: Will your honor take any notice of the expenditures?

Chief Justice BINGHAM: Yes, sir; we have done that, and looked carefully through the evidence as to what the expenditures were for. I say we did consider that, and also looked carefully to the evidence upon that subject as to what expenditures he testified having made and what they were for and for whom.

Mr. WILSON: The $35,000 includes that?

Chief Justice BINGHAM: Yes, sir.

Mr. PHILLIPS: I would like to inquire on behalf of Scott's
388 executors as to whether your honors have taken into consideration the question as to how far the amount that is found due Mr. Lamon is subject to the advances made by Scott, $75,000.00. Your honors, in an opinion delivered by Mr. Justice James on Monday, announced that at that time your honors would not announce your opinion — to how far Lamon's rights were taken subject to payment to Scott's executors. Of course, on behalf of Scott's executors, we contend that Mr. Lamon's whole connection with the case arose by reason of his being a part of the firm of Scott, Lamon and Co. by reason of an assignment to him by Judge Black. He was expressly subject to the payment to Scott's executors, and that any payment which was made to Lamon in this connection either as a representative of Scott or for his services in this case must be taken in subordination to advances made by Scott's executors. I should like to hear an expression on that.

Chief Justice BINGHAM: Our understanding of the matter is that we allow Mr. Lamon for his individual services. We ignore his connection with Black, Lamon and Co. and his right to recover as a survivor or his having been a member of that firm. It is for his individual services and upon his individual account, based upon an individual interest, which we suppose he had one time, presumed to have acquired by virtue of an assignment from Judge Black.

Mr. PHILLIPS: And that assignment on the face of it is taken subject to the repayment of Scott's $75,000, and is so expressed on the face of it. Of course I do not desire to argue the question.

Chief Justice BINGHAM: Whatever is between Mr. Black and Mr. Scott and Mr. Lamon or between the estate and Mr.
389 Lamon with reference to that contract will be a matter for separate litigation entirely so far as this case is concerned. We do not see that there is anything that would authorize us to say that the amount that we will pay to Lamon or will allow Lamon would be subject to be paid to Scott's executors.

Mr. PHILLIPS: That is in the interpleader case, because in the interpleader case, in which I am most directly interested, the claim is directly made there. It is stated in the petition that before any payment should be made to Mr. Lamon that Scott's claim should be paid, so that the matter is presented.

Chief Justice BINGHAM: As to that, it is upon the theory, as we understand it, that Scott's executors have rights under the Black contract to anything that may have been recovered by the executors of Cochrane by virtue of the two contracts, the Cochrane contract and the assignment of that to Black and the making of a new contract recognizing the contracts. We do not think, as we announced the other morning, that Scot-'s executors have anything to do with the fund paid into court by reason of the grounds set forth in their answer in the interpleader case and by their answer in the Lamon case.

Mr. Justice JAMES: Perhaps it would be well for me to add I understood myself instructed to say—and I thought I did express

the conclusion, but I did not fill it out—that that money in court—that the money that was in the first place given to Mrs. Cochrane was not part of the estate that the executors had anything to do with. If anything at all, it was for Mrs. Cochrane; it was particularly not given to the estate under the trust. The estate was not to have it; therefore it was a mere claim on the estate that we
390 shut out. Then, in regard to Mr. Lamon's part, he does not get it at all by virtue of the Black contract.

Mr. PHILLIPS: I have so understood your honor.

Mr. Justice JAMES: He was legitimately employed, and Judge Black had a perfect right to employ people, and of course it was not to come out of the Choctaws. But by this trust he intends that people that were legitimately employed should be provided for, and that Mr. Lamon, as Mr. Lamon, not as partner, not as assignee of the Black contract, but on his own hook, should have it, and that we allow him $35,000.00.

Mr. PHILLIPS: Did your honor decide, because I was not able to be present here, that Mr. Lamon had any employment otherwise than by virtue of his relations to Judge Black or by virtue of his relations to the Cochrane contract?

Justice JAMES: We understood that he came in legitimately as the employee of Judge Black, but that this trust meant that people who had been employed legitimately and were working under Judge Black originally would be provided for. The only suit of that sort brought was by Mr. Lamon. There may have been others. We did not put it on the ground that Mr. Lamon was an assignee of Judge Black, that he was interested in Judge Black's fee, but that he was legitimately employed and did work for the Choctaws, that we would regard him as being included within the intent of the trust, and Mr. Lamon, as we intend it, gets it for himself, not as assignee of Black, Lamon and Co., nor as charged with any contracts that were made with Black.

Mr. PHILLIPS: Well, I understood your honor, in deciding against the claim of Scott, decided also that Cochrane had no claim,
391 there was no payment to be made him for Cochrane's services, because, of course, what was claimed by Scott was that he stood in the place of Cochrane. If any claim was made for Cochrane's services it was subordinate to the claim of Scott.

Chief Justice BINGHAM: In saying what I did as to Lamon being an assignee of Black, I did not mean to say by that that he was to be allowed to recover here because of that contract or by any right given to him by the assignment. That is simply indicative of the legitimacy of his entering into this service. He was performing services in the prosecution of this claim, and then the subsequent contract was made according to the evidence and, continuing that relation, his recognition by the Choctaw agents and chiefs who were present here and the delegates and the recognition of him by McKee himself of his services, McKee's knowledge of it and McKee's withholding knowledge from Lamon and others, for that matter, of the existence of his contract—all of those things together forms a case that they evidence that he did perform services and makes a

case for judgment, as Judge James has said, of a right to recover under the trust provided in the contract of McKee and recognized by the Choctaws in the act of 1887, perhaps the 5th section of that act.

Mr. WEED: Before your honors pass from this subject, may I enquire what disposition was made of the motion to suppress the evidence? I make this inquiry for the purpose of understanding what is to go into the record for the Supreme Court. I suppose all of it; but I want to know what action the court did take on that motion, if it did take any.

Chief Justice BINGHAM: The matter was merely mentioned. No argument was ever presented to us, as I recollect. May I ask you why the motion should be sustained? Were there any
392 reasons? We have never considered it at all. We have made a formal ruling which either of the parties may except to.

Mr. WEED: We do not desire that the case be delayed for the purpose of hearing argument on this motion, of course.

Chief Justice BINGHAM: It would create an endless labor.

Mr. Justice JAMES: I do not think that was heard in the first instance.

Mr. WEED: It was the understanding that they were to be considered here in connection with the case. The reasons for the motion was explicitly stated and the court limited the discussion of the case and we did not address ourselves particularly to the consideration of the objections to the testimony that were urged in the motion.

Chief Justice BINGHAM: I did not understand that you did insist upon disposing of that motion.

Mr. WEED: We do not insist upon argument. I will be content with a formal order on that point by the court. I presume that the logical conclusion would be, from the decision the court has made, that the motion to suppress the evidence must be denied.

Chief Justice BINGHAM: That will be it unless we undertake to examine the whole evidence.

Mr. WEED: The formal order denying the motion to suppress the testimony will be satisfactory to us.

Chief Justice BINGHAM: Very well; if there is no objection we will make it that way.

Mr. HENKLE: I suggest that unless the court desires that the decree shall be at once prepared; that it shall remain open for a day or two for conference by counsel.

Chief Justice BINGHAM: I should think it would be neces-
393 sary, there being so many counsel with conflicting interests. There should be a little time so that all counsel may have time to consider the decree. Some day might be fixed upon which all counsel would be ready here and, if they are not able to agree upon the decree in every respect, they may make their objection to the court.

Mr. HENKLE: Say Tuesday of next week.

COURT: That will do very well.

Mr. HENKLE: I do not think there will be any trouble about writing the decree.

Chief Justice BINGHAM: Then on Tuesday we will expect the decree.

Mr. WILSON: We will take the same order in regard to the motion we made to suppress certain deposition on behalf of Mr. Lamon.

Chief Justice BINGHAM: Very well.

Mr. HENKLE: The same motion was made in the interpleader case on behalf of Mrs. Cochrane'- estate. There were no arguments at all. It was simply filed, and I am quite content with the formal order.

Mr. Justice JAMES: It is perfectly logical on our part that we should overrule the motions, because we used everything and counsel used everything in their arguments. They referred to the testimony.

Mr. WEED: I do not suppose that the court could do anything less than to overrule those motions, in view of the decrees it has ordered in the Lamon and the Latrobe cases.

(Rose estate.)—Mr. SMITH: Your honors will remember that Mr. Rose claimed under the letter from Mr. Lamon, and there was some —, and that Mr. Lamon gave Mr. Rose'- administrators notice to take testimony and did take testimony on that question,
394 although Rose was not a formal party and his case was not argued in this court. I will ask your honors if the formal decree entered and passed by the court would show that the court had not adjudicated the question between Lamon and Rose so that at the proper time, of course, that question might be taken up. I was afraid that if the record went to the Supreme Court of the United States the fact that the testimony had all been taken by notice to Rose as a party to the suit, the decision of this court would effect that; and if it did not say anything about it, it would indicate that it had passed upon that question, which it is understood was not to be passed upon.

Chief Justice BINGHAM: Our decision is that Rose is not a party to the suit—has not made himself a party to the suit—so that the matter between him and Lamon could be considered by us. I presume it is too late now to make him a party—this suit has been heard—unless it be by consent of Lamon's counsel.

Mr. SMITH: I was under the impression that the court would not take up that question at all, he having given notice of his claim.

COURT: You will have the right to proceed against Lamon hereafter.

395 In the Supreme Court of the District of Columbia, in General Term.

WARD H. LAMON
vs.
HENRY E. MCKEE *et al.* } In Equity. No. 11238.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } In Equity. No. 11248.

and

HENRY E. MCKEE
v.
ELLEN COCHRANE, WARD H. LAMON, *et als.* } In Equity. No. 11262.

The CHIEF JUSTICE: The question of interest has been discussed, but the contract that McKee made was to adjust the claims of all parties according to equity and justice. As the contract expressed it, it was an agreement upon his part to adjust these claims and pay them, but that would necessarily mean that he would pay such sum as the parties might be able to agree upon as a fair compensation for their services, and, if they were unable to agree, such sum as the court might say was a proper compensation, and until the claims were adjusted it cannot be said that there was any sum to draw interest. It must be adjusted before there can be a sum of money to which the party is entitled and on which interest runs. It never has been adjusted until the decision of this court. Of course, there can be no penalty under such an agreement as that on the part of the parties who are to adjust. If there had been a demand of payment by Latrobe before this suit was commenced, at any time after the money was paid, of the amount that the court had de-
396 cided to be due him or the claim as adjusted, then there might be some basis for the right to recover interest. That would be so in an ordinary claim arising out of an account stated or some similar matter where the sum due has been liquidated, but this is a sum unliquidated, depending upon the agreement of the parties or the adjustment by some party as to the services performed and their value. That is my view of the matter.

Justice JAMES: It was the theory upon which we understood the court of equity to take hold of this matter and undertake to adjust it. It was left by the parties to the court to adjust, and, of course, until such an adjustment was made, there could be no demand made of an amount due, and there can be no interest paid, of course, until the amount is adjusted.

(Several forms of decrees were *re*presented by counsel to the court.)

Mr. WEED: I think that it should be specified in the decree offered by Mr. Fendall that the time in which the services were performed should be stated. The time was fixed by the decree as

between 1867 and 1874, and I think the language of the opinion ought to be repeated in the decree.

The CHIEF JUSTICE: I think Mr. Latrobe, according to his own testimony, performed the services before the Black contract was ever made; that he was specially employed.

Mr. WEED: He had an arrangement with Cochrane, which resulted in agreement between he and Cochrane to divide the fee, and I think the decree should fix the period of his services from 1867 down to 1874, the date when the Choctaws terminated the contract.

(Further decrees were presented to the court by different counsel.)

397 The CHIEF JUSTICE: There ought to be a separate decree in the interpleader suit for each one or there ought to be one decree to settle the rights of all.

Mr. APPLEBY: The decree presented does not provide any interest on the amount assigned to Mrs. Cochrane, but it provides interest on the sums found due the other parties, and if the case is held up in the Supreme Court their amounts will bear interest and hers would not.

The CHIEF JUSTICE: Of course, that ought to be corrected.

(After further argument by counsel on the forms of the decrees presented.)

The CHIEF JUSTICE: If the counsel will enter their names on the back of their decrees, so that we will know what counsel present the different ones, we will take them and look them over and announce our conclusion in the morning.

398 Filed May 27, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, in General Term.

JOHN H. B. LATROBE, Complainant, *vs.* HENRY E. MCKEE, JOHN D. MCPHERSON, Executor of the Last Will and Testament of John T. Cochrane, Deceased; James P. Scott *et al.*, Executors of the Last Will and Testament of Thomas A. Scott, Deceased, and Ellen Cochrane, Defendants.	Eq.	No. 11248, Doc. 28.

Decree of General Term.

This cause came on to be heard in the general term in the first instance (by virtue of an order to that effect passed by the special term) on the pleadings and evidence, and counsel were heard in behalf of all the parties, and thereupon, upon consideration thereof, it is this 27th day of May, A. D. 1891, ordered, adjudged, and decreed by the general term that the complainant, John H. B. Latrobe, have and recover of and from the defendant Henry E. McKee the sum of seventy-five thousand dollars ($75,000), with interest thereon

from the date of this decree until said amount shall have been paid, and that he have execution thereof as at law.

It is further ordered, adjudged, and decreed that if any sum or sums of money shall be paid to said John H. B. Latrobe out of the fund deposited in court by said defendant, McKee, and now involved in equity cause number 11262 and called the interpleader suit in this court, wherein said Henry E. McKee was plaintiff and Ellen Cochrane, Ward H. Lamon, John D. McPherson, executor, and this defendant and others were defendants, which said cause was heard by this court with this cause, such sum or sums of money so paid shall be credited in favor of said McKee on this decree.

399 It is further ordered, adjudged, and decreed that the said defendant, Henry E. McKee, pay the costs of this cause, to be taxed by the clerk.

E. F. BINGHAM, *C. J.*

400 Filed June 29, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, in General Term, the 26th Day of June, 1891.

JOHN H. B. LATROBE *vs.* HENRY E. MCKEE *et al.* } Equity. No. 11248, Doc. 28.

Mess. Enoch Totten & Reginald Fendall, solicitors for complainant.

GENTLEMEN: Please take notice that on Monday next, the 29th day of June, 1891, at the opening of the court in general term on that day, or as soon thereafter as counsel for the defendant McKee can be heard for that purpose, we shall in open court take an appeal from the decree rendered by the said court at its present term and on the 27th day of May, 1891, in favor of the complainant and against the defendant Henry E. McKee, and at that time we shall move the court to fix the amount of the undertaking or appeal bond to be executed by the defendant McKee for the prosecution of the said appeal, and we shall at the same time offer for acceptance as surety on said appeal bond Hon. Stephen B. Elkins, whose place of business is in the Washington building, No. 1 Broadway, in the city of New York, and whose residence is at Elkins, in the State of West Virginia.

JOHN J. WEED,
JEFFERSON CHANDLER,
M. W. CHOLLAR,
Solicitors for Defendant McKee.

401 Mess. Fendall & Totten, solicitors for complainant:

You are hereby notified that on Monday next, the 29th day of June, 1891, at the opening of the court in general term on that day, or as soon as counsel can be heard for that purpose, we shall call up the above motion for hearing.

JOHN J. WEED,
JEFFERSON CHANDLER, &
M. W. CHOLLAR,
Solicitors for Defendant McKee.

Received a copy of the above motion and notice this 26th day of June, 1891.

ENOCH TOTTEN,
—— FENDALL,
Solicitors for Complainant.

402 Filed June 29, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, in General Term, the 29th Day of June, 1891.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } Equity. No. 11248, Doc. 28.

And now comes the said defendant Henry E. McKee and appeals in open court to the Supreme Court of the United States from the decree of this court, passed in the above cause on the 27th day of May, 1891, in favor of the complainant, Latrobe, and against the said defendant McKee.

JOHN J. WEED,
JEFFERSON CHANDLER, &
M. W. CHOLLAR,
Solicitors for Defendant McKee.

Ordered that the appeal taken by the defendant McKee from the decree passed herein in favor of the complainant in the above-entitled cause be, and the same is hereby, allowed in open court this 29th day of June, 1891.

E. F. BINGHAM, *C. J.*

403 Filed June 29, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, in General Term, the 29th Day of June, 1891.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.* } Equity. No. 11248, Doc. 28.

The defendant Henry E. McKee having appealed from the decree of this court passed herein against him in favor of the complainant on the 27th day of May, 1891, to the Supreme Court of the United States, it is now here ordered that the penalty of the bond for costs to be executed by the said defendant McKee for the prosecution of said appeal be, and the same is hereby, fixed at the sum of two thousand dollars, to be executed and approved as required by law.

E. F. BINGHAM, *C. J.*

404 In the Supreme Court of the District of Columbia.

JOHN H. B. LATROBE
vs.
HENRY E. MCKEE *et als.*
} Equity. No. 11248, Doc. 28.

Assignment of Errors by and on Behalf of the Appellant, Henry E. McKee.

First. The supreme court of the District of Columbia erred in granting to the complainant any order to take testimony in said cause, because the complainant's bill, nor any paragraph thereof, states or sets forth any right, cause of action, claim, or demand against the appellant of which the said court, sitting in equity, had or has jurisdiction.

Second. That court erred in refusing to sustain the motion to dismiss the complainant's bill upon and for the reasons stated in the motion to dismiss said bill filed in said cause by the appellant on the 27th day of May, 1889.

Third. That court erred in requiring the appellant to consent to the use as evidence on the hearing of this cause of the affidavits, documents, and papers specified in and attached to the order passed in the equity court on the 19th day of May, 1890, because the said affidavits, documents, and papers were wholly irrelevant and immaterial to the proof or establishment of any cause of action stated and set forth in the complainant's bill or in any clause, paragraph, or section thereof.

Fourth. That court erred in overruling the motion of the appellant filed on the 28th day of January, 1891, to suppress and
405 strike from the record so much and such parts of the testimony in said cause as are specified, mentioned, and described in said motion.

Fifth. That court erred in deciding that the complainant's bill or any clause, paragraph, or section of said bill stated and set forth any cause of action, right, claim, or demand against the appellant within the equitable jurisdiction of the supreme court of the District of Columbia.

Sixth. That court erred in deciding upon the averments of the complainant's bill that the suit instituted by the complainant was not a suit against the Choctaw nation of Indians, and that the said Choctaw nation of Indians was not a necessary party defendant to this suit.

Seventh. That court erred in deciding upon the averments contained in the complainant's bill that the complainant's suit was not in reality and its legal effect a suit against the Choctaw nation of Indians.

Eighth. That court erred in deciding as a conclusion of law that the contract between the appellant and the Choctaw nation of Indians, dated July 16th, 1870, and the act passed by the general council of the Choctaw nation of Indians and approved February 25, 1888, either or both together, constituted the appellant a trustee for the complainant.

Ninth. That court erred in deciding as a conclusion of law that the money received by the appellant from the Treasury of the United States on the 9th day of July, 1888, under the authority of a requisition drawn in his favor by the legal authorities of the Choctaw nation of Indians and in payment and satisfaction of the contract obligations of the Choctaw nation of Indians to the
406 appellant, was a fund which the appellant held in trust for the benefit of the complainant or in which the complainant had an interest as *cestui que trust*.

Tenth. That court erred in rendering a decree in favor of the complainant, against the appellant, for the sum of seventy-five thousand dollars.

Eleventh. That court erred in deciding that the complainant was entitled to recover in said suit any sum of money from the appellant for or on account of services alleged to have been rendered by said complainant in the prosecution of the claims of the Choctaw nation against the United States subsequent to July 16th, 1870.

Twelfth. That court erred in deciding as a conclusion of law that the complainant could recover a decree against the appellant upon a *quantum meruit*, when the complainant's bill, if any cause of action is stated and set forth therein against the appellant, states and sets forth an alleged cause of action based upon and growing out of the stipulations of an express contract entered into between John T. Cochrane and the Choctaw nation of Indians on the 13th day of February, 1855, and by the terms of the said contract no recovery could be had thereon by the said Cochrane or by those claiming through or under him, unless the performance of said contract was averred and proved, and the complainant's bill contains no averment of the performance of said contract by the said Cochrane or by the said complainant as the associate or successor of said Cochrane.

Thirteenth. That court erred in accepting the contract made and entered into between the complainant and John D. McPherson, executor of the estate of John T. Cochrane, deceased, dated Sep-
407 tember 14th, 1867, as sufficient or any evidence that the complainant was entitled to recover from the appellant the sum of seventy-five thousand dollars or any other sum of money, because by the terms of said contract the said sum of seventy-five thousand dollars was not payable to the said complainant by the said McPherson unless the claim of the Choctaw nation of Indians against the United States should be collected by Hon J. S. Black, as the successor of said Cochrane, and for the further reason that the appellant was not a party to or concluded by the contract made between the said McPherson and the complainant.

Fourteenth. That court erred in deciding that the complainant's bill stated and set forth a cause of action in favor of the complainant, against the appellant, within the equitable jurisdiction of the supreme court of the District of Columbia.

Fifteenth. That court erred in deciding that the cause of action stated and set forth against the appellant in the complainant's bill

was not exclusively cognizable on the law side of the supreme court of the District of Columbia.

Sixteenth. That court erred in refusing to render a decree in favor of the appellant, dismissing the complainant's bill.

Wherefore the appellant prays that the honorable the Supreme Court of the United States reverse, vacate, and set aside the decree passed against him, in favor of the complainant, by the supreme court of the District of Columbia, in general term, on the
408 27th day of May, A. D. 1891, and remand said cause to said court with an order directing said court to dismiss the complainant's bill.

JOHN J. WEED,
JEFFERSON CHANDLER,
Attorneys for the Appellant.

409 Copy.

In the Supreme Court of the District of Columbia, the 14th Day of June, 1891.

JOHN H. B. LATROBE *vs.* HENRY E. McKEE *et als.* } No. 11248, Doc. 28. Appeal.

Know all men by these presents that we, Henry E. McKee and Stephen B. Elkins, are bound unto the above-named John H. B. Latrobe in the sum of two thousand dollars, to be paid to the said John H. B. Latrobe, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 14th day of July, 1891.

Whereas the above-named Henry E. McKee has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Henry E. McKee shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY E. McKEE,
By M. W. CHOLLAR, [SEAL.]
Att'y-in-fact.
S. B. ELKINS. [SEAL.]

Sealed and delivered in presence of—
BLAINE ELKINS,
JOHN J. WEED,
To the signature of M. W. Chollar.

Indorsed: Approved July 14, 1891. A. B. Hagner.

410 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause, paged from 1 to 409, inclusive.

Witness my hand and the seal of said court this 14 day of July, 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, Jr., clerk of the said court, to be in due form.

Witness my hand and seal this 14 day of July, 1891.

E. F. BINGHAM,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14 day of July, 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

411 Supreme Court of the United States, October Term, 1891.

HENRY E. MCKEE, Appellant,
vs.
JOHN H. B. LATROBE, Appellee. } No. 1266.

Messrs. Enoch Totten & Reginald Fendall, of counsel for appellee:

You are hereby notified that upon the hearing of the above-entitled cause in this court the appellant will urge, discuss, and rely

upon the following assignments or statements of errors as reasons and grounds for the reversal of the decree entered in said cause against the appellant, to wit:

First. The supreme court of the District of Columbia erred in granting to the complainant any order to take testimony in said cause, because — the complainant's bill nor any paragraph thereof states or sets forth any right, cause of action, claim, or demand against the appellant of which the said court, sitting in equity, had or has jurisdiction.

Second. That court erred in refusing to sustain the motion to dismiss the complainant's bill upon and for the reasons stated in the motion to dismiss said bill, filed in said cause by the appellant on the 27th day of May, 1889.

Third. That court erred in requiring the appellant to con-
412 sent to the use as evidence on the hearing of this cause of the affidavits, documents, and papers specified in and attached to the order passed in the equity court on the 19th day of May, 1890, because the said affidavits, documents, and papers were wholly irrelevant and immaterial to the proof or establishment of any cause of action stated and set forth in the complainant's bill or in any clause, paragraph, or section thereof.

Fourth. That court erred in overruling the motion of the appellant, filed on the 28th day of January, 1891, to suppress and strike from the record so much and such parts of the testimony in said cause as are specified, mentioned, and described in said motion.

Fifth. That court erred in deciding that the complainant'- bill or any clause, paragraph, or section of said bill, *or* stated or set forth any cause of action, right, claim, or demand against the appellant within the equitable jurisdiction of the supreme court of the District of Columbia.

Sixth. That court erred in deciding, upon the averments of the complainant's bill, that the suit instituted by the complainant was not a suit against the Choctaw nation of Indians, and that the said Choctaw nation of Indians was not a necessary party defendant to this suit.

Seventh. That court erred in deciding, upon the averments contained in the complainant's original bill, that the complainant's suit was not a reality and its legal effect a suit against the Choctaw nation of Indians.

Eighth. That court erred in deciding as a conclusion of law that the contract between the appellant and the Choctaw nation
413 of Indians, dated July 16th, 1870, and the act passed by the general council of the Choctaw nation of Indians and approved February 25, 1888, constituted the appellant a trustee for the complainant.

Ninth. That court erred in deciding as a conclusion of law that the money received by the appellant from the Treasury of the United States on the 9th day of July, 1888, under the authority of a requisition drawn in his favor by the legal authorities of the Choctaw nation of Indians, and in payment and satisfaction of the

contract obligations of the Choctaw nation of Indians to the appellant, was a fund which the appellant held in trust for the benefit of the complainant or in which the complainant had an interest as *cestui que trust.*

Tenth. That court erred in rendering a decree in favor of the complainant against the appellant for the sum of seventy-five thousand dollars.

Eleventh. That court erred in deciding that the complainant was entitled to recover in said suit any sum of money from the appellant for or on account of services alleged to have been rendered by said complainant in the prosecution of the claims of the Choctaw nation against the United States subsequent to July 16th, 1870.

Twelfth. That court erred in deciding as a conclusion of law that the complainant could recover a decree against the appellant upon a *quantum meruit,* when the complainant's bill, if any cause of action is stated and set forth therein against the appellant, states and sets forth an alleged cause of action based upon and growing out of the stipulations of an express contract entered into between John T. Cochrane and the Choctaw nation of Indians on the 13th day
414 of February, 1855, and by the terms of the said contract no recovery could be had thereon by the said Cochrane or by those claiming through or under him unless the performance of said contract was averred and proved, and the complainant's bill contains no averment of the performance of said contract by the said Cochrane or by the said complainant as the associate or successor of said Cochrane, and there is no evidence in the record proving or tending to prove the performance of said contract by the said Cochrane or by the complainant as the associate or successor of said Cochrane.

Thirteenth. That court erred in accepting the contract made and entered into between the complainant and John D. McPherson, executor of the estate of John T. Cochrane, deceased, dated September 14th, 1867, as sufficient or any evidence that the complainant was entitled to recover from the appellant the sum of seventy-five thousand dollars or any other sum of money, because by the terms of said contract the said sum of seventy-five thousand dollars was not payable to the said complainant by the said McPherson unless the claim of the Choctaw nation of Indians against the United States should be collected by Hon. J. S. Black as the successor of said Cochrane, and for the further reason that the appellant was not a party to or concluded by the contract made between the said McPherson and the complainant.

Fourteenth. That court erred in deciding that the complainant's bill stated and set forth a cause of action in favor of the complainant against the appellant within the equitable jurisdiction of the supreme court of the District of Columbia.

415 Fifteenth. That court erred in deciding that the cause of action stated and set forth against the appellant in the complainant's bill was not exclusively cognizable on the law side of the supreme court of the District of Columbia.

Sixteenth. That court erred in refusing to render a decree in favor of the appellant, dismissing the complainant's bill.

And upon the hearing, argument, and consideration of the said statements or assignment of errors the appellant will urge, rely upon, and direct the attention of the court to so much and such parts of the record as are hereinafter specified and designated, and the same will be printed by the clerk of this court as the record upon which the appeal of the appellant McKee will be heard and determined in this court, as provided in paragraph 9 of rule 10 of the rules of practice of this court, to wit:

1. Docket entries, pp. 1–5.
2. Complainant's original bill, pp. 6–19.
3. Subpœna to answer, restraining order, and service, pp. 20, 21.
4. Answer of defendant McKee, pp. 22–27.
5. Answer of defendant Ellen Cochrane, pp. 27–31.
6. " " defendant John D. McPherson, executor of estate of John T. Cochrane, deceased, pp. 31–33.
7. Replication, joinder in issue, p. 34.
8. Order for closing testimony, p. 35.
9. Denial of motion to dismiss bill, p. 38.
10. Answers of executors of Thomas A. Scott, pp. 39–42.
11. Motion to dismiss bill, pp. 43, 44.
12. Orders denying motion to dismiss bill, pp. 45, 46.

416 13. Testimony of John H. B. Latrobe, appellee, pp. 47–95.

14. Orders limiting time to take testimony, pp. 97, 98.
15. Vacation of orders in regard to taking testimony, pp. 99, 99½, 100.
16. Order appointing commissioner to take testimony of McKee, p. 142.
17. Order extending time to examine McKee orally, p. 143.
18. Testimony of Latrobe in rebuttal, pp. 302–324.
19. Order overruling motion by appellee for an extension of time to take testimony, pp. 326–363.
20. Motion to suppress testimony, pp. 369–371.
21. Order overruling motion to suppress testimony, p. 375.
22. Opinions of Justice James and Chief Justice Bingham, pp. 376–397.
23. Decree against appellant in favor of appellee for $75,000, pp. 398, 399.
24. Appeal of defendant McKee, appellant, pp. 400, 401.
25. Order allowing appeal, p. 402.
26. " fixing amount of appeal bond, p. 403.
27. Assignment of errors, pp. 404–408.
28. Appeal bond, p. 408½.
29. Certification of record, p. 489.

JOHN J. WEED &
JEFFERSON CHANDLER,
Attorneys and Counsel for Appellant.

We hereby acknowledge service of a copy of the foregoing statements or assignment of errors and designated parts of the record

to be printed on behalf of the appellant, as provided in para-
417 graph 9 of rule 10 of the rules of practice of the supreme court, this 17th day of July, 1891.

REGINALD FENDALL,
ENOCH TOTTEN,
Attorneys for Appellee.

418 [Endorsed:] Case No. 14,740. Term No., 546. Henry E. McKee, appellant, *vs.* John H. B. Latrobe. Original. Statement and assignment of errors on behalf of appellant and designation of such parts of the record as appellant will rely — to sustain said assignments of error. John J. Weed & Jefferson Chandler, attorneys for appellant.

[Stamped:] Office Supreme Court U. S. Filed Jul- 17, 1891. James H. McKenney, clerk.

Endorsed on cover: Case No. 14,740. District of Columbia supreme court. No. 546. Henry E. McKee, appellant, *vs.* Charlotte V. Latrobe, executrix of John H. B. Latrobe, deceased. Filed July 14, 1891.

Office Supreme Court, U. S.
FILED.
MAR 4 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

26 vc

HENRY E. McKEE,
Appellant,

vs.

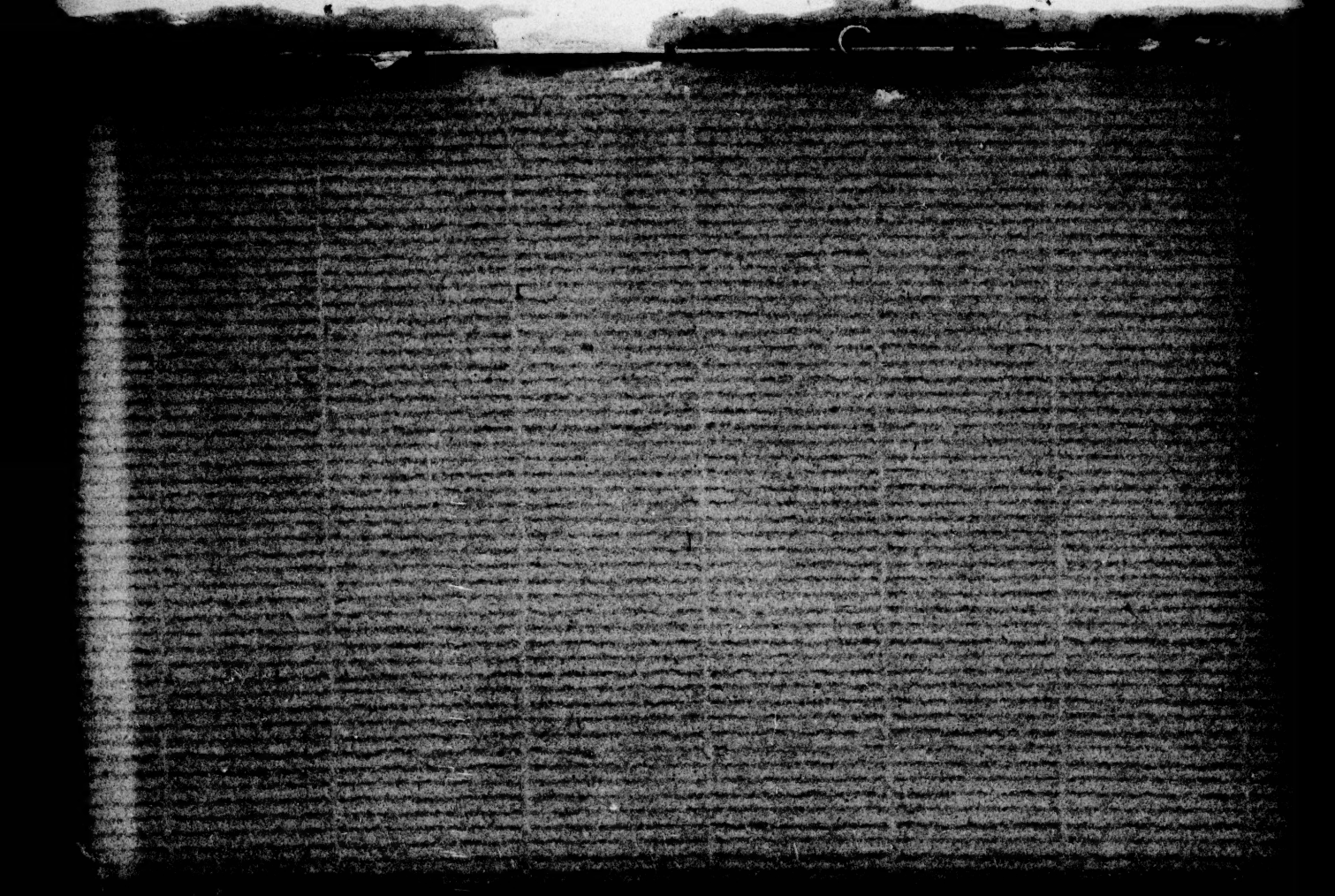
CHARLOTTE V. LATROBE, *Executrix of J. H. Latrobe, deceased.*

Term, No. 224

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief and Argument for Appellant.

JOHN J. WEED,
JEFFERSON CHANDLER,
Attorneys for the Appellant.



Supreme Court of the United States.

OCTOBER TERM, 1894.

HENRY E. McKEE, *Appellant,*

vs.

CHARLOTTE V. LATROBE, *Executrix of J. H. B. Latrobe, deceased.*

Term No. 22[illegible]

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief and Argument for Appellant.

I.

Statement of Case.

John H. B. Latrobe filed his bill against the appellant in the Supreme Court of the District of Columbia on the 13th day of July, 1888, and attempted to construct a cause of action against him on substantially the following allegations:

1. That in 1852 the United States of America was justly indebted to the Choctaw Nation of Indians by reason of the liability of the United States to ac-

count to said Nation for the net proceeds of certain lands, according to several treaties entered into between the United States and said Choctaw Nation in the years 1786, 1820 and 1830.

That being so liable, the United States and the Choctaw Nation entered into another treaty, in the year 1855, for the purpose of securing an adjustment of the said liability, and that by Articles XI and XII of said last treaty the liability of the United States was to be determined by the United States Senate; and the adjudication and determination of the Senate was to be final. (Paragraph 2 of Bill, Rec., pp. 4 and 5.)

2. That for many years prior to the ratification of the last named treaty, the Choctaw Nation had endeavored, without success, to bring about an adjustment of said claim; and, before the execution of said last mentioned treaty, desired to secure the services of John T. Cochrane, who was then residing in Washington; and, with a view of employing him to prosecute said claim, the Choctaw Nation, on the 9th day of November, 1853, and the 10th of November, 1854, passed certain resolutions of the legislative council authorising P. P. Pitchlynn, Israel Fulsom, Dickson W. Lewis and Samuel Garland to remain in Washington and secure a final settlement of said claim, if they could, with full power to make all contracts which, in their judgment was, or may become necessary, to secure an adjustment and settlement of said claim. (Paragraph 3, Rec., pp. 5, 6.)

3. That John T. Cochrane was employed under said authority to prosecute said claim; and that a

certain contract with Albert Pike theretofore made was revoked, as nothing had been done under it.

The contract with Cochrane was dated February 13, 1855, by the terms of which Cochrane agreed to continue, as heretofore, with zeal and energy and faithfulness to urge and prosecute all the unsettled claims and demands of the Choctaw Nation upon the United States before any of the Departments or officers thereof and, if necessary, before Congress, and especially the claim mentioned in the treaty of September 27, 1830, to the net proceeds of the lands ceded to the United States by that treaty, for which said parties, in the name of the Choctaws, agree that out of any and all moneys obtained by and paid to said Nation or individuals thereof, for and on account of said claim, there should be promptly paid to said Cochrane 30 per cent. thereof as soon as the same shall be paid by the United States to the Choctaw Nation, or its legal representatives. And said contract provided that any agent of the United States for the Choctaw Indians, or any other person into whose hands the money should come, on the demand of the said Cochrane, his heirs or assigns, should pay over to him or them 30 per cent. of the same on the production of a receipt therefor from the said Cochrane, his heirs or assigns. Said Choctaws pledged themselves to give sufficient vouchers therefor to pass said payment at the settlement of his account in Washington. (Paragraph 4, Rec., pp. 6, 7, 8.)

4. That very soon after the passage of said resolution of November 9, 1853, said Cochrane entered upon his duties under said contract, and secured the just

and reasonable Treaty of 1855, and the Senate of the United States determined the matters submitted to them under said Treaty in favor of the Choctaws, and directed the Secretary of the Interior to state an account between the United States and said Nation, in accordance with the principles of settlement, decided and announced by the Senate; and that the Secretary of the Interior stated said account, and reported the same to Congress; and that by said account stated there was found to be due from the United States to said Nation the sum of $2,981,247. 30. (Paragraphs 5, 6, Rec., p. 9.)

5. That after the war of the rebellion the Choctaw Nation, by its legal representatives, employed him as counsel and professional advisor in all matters, including the net proceeds claim, for which said Nation agreed to pay him a reasonable compensation. Thereupon he entered upon the duties thus assumed and prepared a treaty which was ratified, reaffirming the obligations of the United States, under which he alleges that the net proceeds claim was secured and has since been prosecuted to a successful conclusion. He employed others under this employment and prepared evidence and made arguments to sustain the claim. That upon the evidence prepared and submitted by him, said claim was mainly based, and was finally conducted to judgment and payment. (Paragraphs 7 and 8, Rec., pp. 9, 10.)

6. That Cochrane died on the 21st day of October, 1866, and that McPherson was appointed as executor, and said executor then entered into a contract with Jeremiah S. Black, which contract is given on

pages 10 and 11 of the Record. In said contract the said Black agreed to proceed with all diligence to procure an appropriation. That as a part of said contract with Black, McPherson agreed to assign and transfer all the title and interest of Cochrane, his heirs and assigns, in the 30 per cent. compensation secured by the Cochrane contract. That said Black was substituted for said Cochrane in said contract. That Black was to pay to the executor of Cochrane such sum as was to be agreed upon by the parties and pay all other demands justly due and payable out of the 30 per cent., and that said Choctaws should in no case be required to pay more than 30 per cent.

That said contract with Black was reported by the Choctaw delegates to the Choctaw Council, and said Council on the 18th of November, 1867, passed a certain act, which is set out in full, and refers only to the action of the delegates previously appointed, to the payment of Cochrane, and the distribution of the money in case an appropriation should be made for its payment. (Paragraphs 10, 11, 12, p. 10, 11, 12, 13.)

7. That in said agreement between the said Black and the said McPherson, and the said approval by said Nation *was without his knowledge and consent;* but complainant subsequently had conversations and treaties with said McPherson and said Black, which resulted in an agreement between complainant and said McPherson, by which said McPherson agreed to pay to complainant the sum of SEVENTY-FIVE THOUSAND DOLLARS, *in full for all his services in and about said business for said Nation,*

OUT OF THE FIRST MONEYS WHICH SHOULD BE RECEIVED BY HIM, SAID M'PHERSON, OF, OR ON ACCOUNT OF SAID CLAIM OF SAID CHOCTAW NATION AGAINST THE UNITED STATES; thereupon complainant gave his consent to said arrangement between said Black and said McPherson and said Nation.

That complainant's services continued actively, in connection with said Black and others in the prosecution of said case, on behalf of said Nation, until about the time the said McKee interposed in the business, *as the leading agent of said Nation*, sometime in the month of July, 1870; *and after that date complainant's services were apparently not needed or desired by the other attorneys of said Nation, and he did but little.* (Paragraph 13, Rec., p. 3.)

8. That Thomas A. Scott became interested with Black and McPherson by advancing money, and that Scott's legal representatives thereafter claimed an interest in the 30 per cent. and he, therefore, made them parties to his bill; and the alleged contract between Black, McPherson and Scott is set out in full. (Paragraphs 14 and 15, Rec., pp. 13, 14, 15.)

9 That in 1884 said Black died. By an Act of March 3, 1881, it is alleged the matter of dispute between the United States and the Choctaw Nation were referred to the Court of Claims, in which proceedings were had and resulted in a judgment, which both parties appealed from to the Supreme Court, where the case was decided on the 14th of December, 1886, directing the Court of Claims to enter judgment against the United States for $2,858,798.62, which was done; and afterwards, in June, 1888, Congress enacted a

law authorizing the payment of said judgment. (Paragraphs 16, 17, 18, Rec., p. 16.)

10. That under this statute payment of said judgment was directed to be made as follows: "and said sum, together with the interest thereon, shall be paid from time to time and in such sums as requisition or requisitions thereafter shall be made by the proper authorities to the Choctaw Nation, to National Treasurer of said Nation, or to such other person or persons as shall be named in said requisition therefor, in accordance with article twelve of the treaty between the United States and the Choctaw Nation, concluded June 22d, 1855." (Paragraph 18, Rec., p. 16.)

11. That complainant further alleged, that McKee procured from the agents or some of the agents of the Choctaw Nation, an agreement which is set forth in full; and in said agreement it is recited that James G. Blunt, of Kansas, and Henry E. McKee, of Arkansas, were employed as counsel to prosecute the claim of the Choctaw Nation; and it was agreed that for the services rendered and money to be expended by them in the prosecution of the claim, they should receive 30 per cent. of any sum that may be paid by the United States on account of said claim, said 30 per cent. to be paid to Blunt and McKee, or their legal representatives, whenever the money or bonds arising from said claim shall come into the possession of the parties authorized by the Choctaw people to receive the same.

It was further provided in said contract that Blunt and McKee was to pay Mrs. Cochrane 5 per cent. of the 30 per cent. specified in said agreement when

they should receive the same; and said Blunt and McKee further agreed to adjust the claims of all parties who had rendered service in the prosecution of said claim previous to the date of said contract, upon the principle of equity and justice, according to the value of the services rendered. (Paragraph 19, Rec., pp. 16, 17.)

12. That McKee is bound in equity and justice to fully satisfy and pay over to complainant a fair and just compensation for the service which he has heretofore rendered. That McKee ought to be charged as a trustee holding funds for the benefit of this plaintiff. The complainant further alleges that he is informed and believes *that the Choctaw Nation appointed McKee the agent of said Nation to receive from the United States Treasury any sums of money which might be appropriated to pay the judgment of the Court of Claims*, or at least 30 per cent. thereof; and he believes that McKee has drawn the 30 per cent. and now holds the same, and he fears that McKee may refuse to adjust his claim and depart the jurisdiction of the court; that other persons than those above mentioned claim to have rendered service; that he requested McKee to ascertain, as near as may be, the amount of money which plaintiff was to receive out of said judgment, if he should be entitled to anything, and make some arrangement to secure the payment thereof, but McKee refused. (Paragraphs 20, 21, 22, 23, Rec. pp. 17, 18.)

13. That Ellen Cochrane, who is the widow of John T. Cochrane, is made a party to this cause, because she is named in the McKee contract; but com-

plainant denies that she is entitled to any part of the thirty per cent. fund by reason of said McKee contract, and that if for any reason the Black contract was invalid, that this would not affect complainant's rights to said fund, but that he is entitled in good conscience to be paid for his labor out of the proceeds of the judgment, and that McKee, by virtue of his agreement, is a trustee for the benefit of this complainant; that it was agreed in 1866, between the complainant and the Choctaw Nation that complainant *should be paid a reasonable fee or compensation for services which he might render in the prosecution of said claim of said Nation for "Net Proceeds;" and that his services should be rendered in conjunction with the said John T. Cochrane; and that it was subsequently agreed by and between said Cochrane and complainant that such compensation should be paid to him out of the fee reserved and secured to said Cochrane, by the said contract with the Choctaw Nation dated February* 13, 1855; that no part of said compensation, nor anything on account thereof, has ever been paid to or received by complainant; *and that he is fairly and reasonably entitled to demand and receive therefor* $75,000, *as agreed aforesaid between complainant and said McPherson.* (Paragraphs 25, 26 and 26 bis. Rec. pp. 18, 19.)

Prayers.

The complainant thereupon prayed:

1st. For process against the defendants.

2d. For a writ of injunction against McKee, restraining him or his agents from removing the said

30 per cent. of said judgment, amounting to $923,-548.58, collected and received by him, from or beyond the District of Columbia; and also prohibiting said McKee from departing from the District of Columbia without leave of the Court.

3d. That all persons interested in said fund of 30 per cent. be made parties to this bill when they shall be ascertained.

4th. That a receiver be appointed by the Court to take charge of said 30 per cent. fund collected by McKee and hold the same subject to the order of the court.

5th. That complainant may be paid the sum of $75,000 out of said 30 per cent fund collected by said McKee.

6th. For general relief. (Record, pp. 19, 20.)

Answers of Defendants.

The answers of the several defendants are found in the record, pages 22 to 38 inclusive. The answers to those paragraphs which are supposed to state the case upon which the decree entered herein was based, are the *seventh*, *thirteenth*, *twentieth*, *twenty-second*, *twenty-sixth* and *twenty-sixth bis.* paragraphs, and these are expressly denied by the appellants under oath. There is no evidence in the record which is sufficient to destroy the force and effect of the answers made to these paragraphs.

The evidence which the complainant furnished in support of the facts stated in said paragraphs proves that the matters alleged as facts in said paragraphs have no foundation, and are purely the invention of an eccentric imagination.

The Decree.

The case was certified to the General Term for hearing in the first instance, (Rec., p. 117), and that Court on the 27th of May, 1891, directed a decree to be entered agaist the appellant ; and by said decree it was "Ordered, adjudged and decreed that the complainant John H. B. Latrobe have and recover from the defendant Henry E. McKee (the appellant) the sum of Seventy Five Thousand Dollars, with interest thereon from the date of this decree, until said amount shall have been paid, and that he have execution therefor as at law." (Record pp. 166, 167.) From that decree, the appellant, on the 29th day of June, 1891, prayed an appeal to this Court, which was duly allowed as prayed. (Rec., p. 168.)

II.

Opinion of the Court.

So much of the opinion of the Court as discloses the theory or legal principles upon which the Court based the said decree, is contained in the following language used by Mr. Justice JAMES, who announced the conclusion at which the court had arrived in the three cases which were argued, submitted and decided at the same time, and which are now here by appeal and numbered on the docket of the present term, as 203, 224, 225, 226, and is as follows :

> "It was claimed on the part of McKee, in the first place, that there was not rightly any amended or supplemental bill here ; that the original bill was substantially and in its effect

a bill against the Choctaws, of which the Court had no jurisdiction.

"Our conclusion is that it was not simply a bill filled to control the money of the Choctaws, but that it was also a bill against McKee based upon the theory that he personally was about to get hold of the money of the Choctaws, *and if he got their money he would at the same time, or in consequence get possession under the name of his fee, of the funds out of which these parties were to be paid. They claim that that made a trust at that date, dating from that time;* but the point that we make here is, that it was a bill, though faulty, against McKee personally and individually to keep him from getting possession of the funds to which they would have to look in some way for their compensation."

"Now as to the basis on which the claim stands, I will speak first of Lamon. His argument was that this was a trust, and that he was one of the *cestui que trust.* We understand that that doctrine is applied *when the money in question belongs in equity to the complaindnt that has been improperly gotten and held by the defendant.* The complainant would have to stand upon his title to it as a person having a contract, and that is the only way in which he could show that that money is a fund to pay fees with belonging to him. We think that he has not shown that. The contract that he talked about was made with Black, and it has been held that if a party has a personal right, is personally retained, that he is the one who must look to his remedy. He was not employed by that contract, and it would further involve the doctrine that the contract with Black, even if it were a party, survives down to that time that the money was gotten hold of by McKee. *In short, our conclusions in this case is, that he must stand on the express trust which it is alleged can be gathered from McKee's contract with the In-*

dians in 1870, *and along with it the Choctaw Statute of* 1888. *It is from the two taken together that the trust is derived, and that, we have concluded, is Mr. Lamon's position. Now the question is, what does that trust cover? We are of the opinion that we must take the two together, the statute and the contract together, to find out; and our conclusion as to that is that Mr. Lamon, if he has any claim, it is not as a party to the writ ten contract with Black and the Indians, but by reason of another legitimate employment in the case, and he has it as one of the parties provided for in the express trust.* We have further concluded that he shows by himself that in Equity he is covered by means of his arrangement with Black. There was an assignment to him of a certain interest, and he derives through him to that extent and in that manner. Black was subject to lose all his rights by going out of the case, and so was Lamon, unless they have been referred to as having been retained and specially recognized as *cestui que trust.*"

* * * * * * *

"As to Latrobe's interest we think he stood differently. He was employed himself and he did not come in under Black, but had an independent position; and we feel that we could estimate the value of his services so far as we propose to do it. *He himself fixed the value of his services by an arrangement that he made with McPherson at* $75,000, and we are of opinion that he shows merits up to that amount and we propose to allow that sum, and that is the difference in his case and Lamon's. We cannot make Lamon's out, but we think we are authorized to make out Latrobe's, and we recognize him as being entitled to $75,000. He may be entitled to more, but we think he has shown himself properly to be paid that amount." (Rec. pp. 154, 155, 156.)

The reference to an amended and supplemental bill, in the opinion of the Court, relates to the case of Ward H. Lamon *et al. vs.* Henry E. McKee *et als.* now pending in this Court, and numbered on the docket of the present term as 224 225, for there was no amended or supplemental bill filed in this cause.

III.

Assignment of Errors.

First. The Supreme Court of the District of Columbia erred in deciding upon the averments of the complainant's bill, that the suit instituted by the complainant was not a suit against the Choctaw Nation of Indians, and that the said Choctaw Nation of Indians was not a necessary party to this suit.

Second. That court erred in deciding upon the averments contained in the complainant's bill, that the complainant's suit was not in reality and its legal effect a suit against the Choctaw Nation.

Third. That court erred in deciding that the complainant's bill, or any clause, paragraph or section of said bill stated and set forth any cause of action, right, claim, or demand against the appellant, within the equitable jurisdiction of the Supreme Court of the District of Columbia.

Fourth. That court erred in refusing to sustain the motion to dismiss the complainant's bill, upon and for the reasons stated in the motion to dismiss

said bill, filed in said cause by the appellant on the 27th day of May, 1889.

Fifth. That court erred in deciding as a conclusion of law, that the contract between the appellant, and the Choctaw Nation of Indians, dated July 16, 1870, and the act passed by the General Council of the Choctaw Nation of Indians, approved February 25, 1888, constituted the appellant a trustee for the complainant.

Sixth. That court erred in deciding as a conclusion of law, that the money received by the appellant from the Treasury of the United States on the 9th day of July, 1888, under the requisition drawn in his favor by the legal authorities of the Choctaw Nation of Indians, and in payment and satisfaction of the contract obligations of the Choctaw Nation of Indians to the appellant, was a fund which the appellant held in trust for the benefit of the complainant or in which the complainant had an interest as *cestui que trust.*

Seventh. That court erred in deciding as a conclusion of law that the complainant could have a decree against the appellant, upon a *quantum meruit*, when the complainant's bill, if any cause of action is stated and set forth therein against the appellant, states and sets forth an alleged cause of action based upon, and growing out of the stipulations of, an *express contract* entered into between John T. Cochrane and the Choctaw Nation of Indians, on the 13th day of February, 1855, and, by the terms of the said contract, no recovery could be had thereon by the said Cochrane, or by those claiming through or under him,

unless the performance of said contract was averred and proved; and the complainant's bill contains no averment of the performance of said contract by the said Cochrane, or by the complainant as the associate or successor of said Cochrane, and there is no evidence in the record proving, or tending to prove, the performance of said contract by the said Cochrane, or by the complainant, as the associate or successor of said Cochrane.

Eighth. That court erred in deciding that the complainant was entitled to recover in said suit any sum of money from the appellant, for or on account of services alleged to have been rendered by said complainant in the prosecution of the claims of the Choctaw Nation against the United States, subsequent to July 16, 1870.

Ninth. That court erred in accepting the contract made between the complainant and John D. McPherson, executor of the estate of John T. Cochrane, deceased, dated September 14th, 1868, as sufficient, or any evidence that the complainant was entitled to recover from the appellant the sum of seventy-five thousand dollars, or any other sum of money; because and for the reason that by the terms of said contract the said sum of seventy-five thousand dollars was not payable to the said complainant by the said McPherson, unless the claim of the Choctaw Nation of Indians against the United States should be collected by Hon. J. S. Black, as the successor of said Cochrane; and, for the further reason that the appellant was not a party to, or concluded by, the contract made between the said McPherson and the complainant.

Tenth. That court erred in overruling the motion of the appellant, filed on the 27th of January, 1891, to supress and strike from the record so much and such parts of the testimony in said cause, as are specified, mentioned, and described in said motion.

Eleventh. That court erred in deciding that the cause of action stated and set forth against the appellant in the complainant's bill, was not exclusively cognizable on the law side of the Supreme Court of the District of Columbia.

Twelfth. That court erred in rendering a decree in favor of the complainant, against the appellant, for the sum of seventy-five thousand dollars.

Thirteenth. That court erred in refusing to render a decree in favor of the appellant, dismissing the complainant's bill.

IV.

Questions Presented by the Record.

1. The Supreme Court of the District of Columbia was without jurisdiction to entertain any suit against the Choctaw Nation, which Nation, upon the averments of the bill filed against the appellant, was a necessary party to the suit instituted by the appellee's testator against the appellant in that court, for the following reasons:

Because the said bill, by its averments and in its legal effect is a suit against the Choctaw Nation of Indians, upon contracts made by said Nation, and

the said court was without jurisdiction to entertain any suit instituted against said Nation.

This question arises upon and by the averments of the 4th, 11th, 13th and 21st paragraphs of the bill filed against appellant and by the motion of the appellant to dismiss said bill made on the 27th day of May, 1889. (Record, pp. 6, 7, 8, 10, 11, 12, 13, 18, 38, and 39.)

2. The Supreme of the District of Columbia, sitting as a Court of Equity, had no jurisdiction to hear and determine the causes of action, claims or demands stated and set forth in the bill filed in said court by the appellee's testator against the appellant, because the said bill, nor any paragraph or averment thereof, states or sets forth any cause of action of which a Court of Equity has jurisdiction.

This question is presented by the 4th, 11th, 13th, 19th, 20th, 26th, 26th *bis* paragraphs of the bill.

These paragraphs in their substance and legal effect rely upon the contract between Cochrane and the Choctaw Nation, made on the 13th day of February, 1855, the continuance thereof after the death of Cochrane, by an arrangement between McPherson, as Cochrane's executor, and Jeremiah S. Black, which arrangement was approved by the Choctaw Nation; the agreement between McPherson, as executor of Cochrane, to pay Latrobe $75,000 for services which he pretended to have rendered *under a verbal contract made with Cochrane;* but which was, in fact, made to procure the consent of Latrobe to the contract between McPherson and the Choctaw Nation, and to prevent the opposition of Latrobe and his associates to the suc-

cess of the efforts being made by Black to collect the claim; and by the contract between Blunt and McKee and the Choctaw Nation dated July 16th. 1870.

These contracts and paragraphs are supposed to state a cause of action within the equitable jurisdiction of the Court which rendered the decree, upon the assumption that the contracts of the Choctaw Nation with Cochrane and Black *created a fund out of which Latrobe was entitled to be paid without regard to the performance of said contract by said Cochrane or said Black;* and that the contract of the appellant with the Choctaw Nation constituted the appellant a trustee of said fund, and made the money received by the appellant under and in satisfaction of his contract with the Choctaw Nation, a trust fund, for which the appellant was liable to account to Latrobe, and out of which, by virtue of the terms of the contract between McPherson and Latrobe, the said Latrobe was entitled to be paid $75,000.

3. There was no liability on the part of the Choctaw Nation, under either the contract with Cochrane or the contract with Black, to pay any compensation for services rendered under said contracts until the said contracts were performed by the successful prosecution of the claims of the Choctaw Nation against the United States, and the payment of the money due thereon; and no person claiming or asserting a right or interest under said contracts, or either of them, would have or could acquire any rights under said contracts which could be enforced at law or in equity, unless it was averred and proved

that the said contracts had been fully performed by Cochrane, or by Black, as his successor; and since the appellee asserts a right to be paid under or in consequence of the existence of said contracts, and fails to aver and prove the performance thereof by the persons under or through whom he asserts his claim upon said funds, he was not entitled to recover either at law or in equity; and, since no fund was created or became payable by virtue of the performance of either the Cochrane or Black contracts, there was no fund created out of which the said Latrobe was entitled to be paid.

These questions arise upon and are presented by the averments and assumptions of the 20th, 22d, 26th, and 26th *bis* paragraphs of the appellee's bill.

4. The appellant never assumed the relations or duties of a trustee to the appellee's testator, either by the terms of the contract of the appellant with the Choctaw Nation, dated July 16th, 1870, nor by any subsequent acts done by the appellant in fulfillment of, or under the provisions of, said contract.

This question arises upon the averments of the 20th paragraph of the bill, and the opinion of the court below, which declare that the appellant's contract with the Choctaw Nation, and the *fifth* section of the act of the Choctaw National Council, making provision for the payment of the amounts due under the contracts with J. B. Luce, Henry E. McKee, and J. G. Blunt, approved February 25th, 1888, constituted the appellant a trustee in respect of the money received by him from the United States upon requisitions drawn in his favor by the authori-

ties of the Choctaw Nation, and rendered him liable to account as such to the appellee's testator.

5. The evidence considered by the court and found in the record at pages 117 to 134 inclusive, was incompetent and immaterial, and could not be legally used for any purpose.

This question is raised by the motion made by the appellant on the 27th day of January, 1891, to suppress and strike out said testimony and the order overruling said motion made by the Court in General Term, on the 27th of May, 1891. (Record, pp. 152, 153, 154.)

VI.

Legal Propositions, Authorities and Arguments.

A. The Supreme Court of the District of Columbia was without jurisdiction to entertain the bill filed by the appellee's testator against the appellant in that court, because, upon the averments of the bill the said suit is, in its legal effect, a suit against the Choctaw Nation, upon contracts made by said Nation, and said Nation is therefore a necessary party to this suit.

a. If the bill filed against the appellant states any cause of action it is against the Choctaw Nation and not against the appellant.

The entire scheme and purpose of the bill *is the recovery from the Choctaw Nation of compensation alleged to be payable to Latrobe for services rendered*

by him as a lawyer in the prosecution of the claims of said Nation against the United States upon a contract alleged to have been made by him with said Nation, or under contracts made with said Nation by Cochrane and Black.

It is averred in the *seventh* paragraph that *the Choctaw Nation*, by its duly authorized legal representatives, employed said Latrobe as their counsel and professional adviser in all matters appertaining to their rights and claims against the United States, *for which said Nation agreed to pay him a reasonable compensation.*

The bill then, in the *sixteenth* paragraph, recites the fact, that *the Choctaw Nation* recovered a judgment against the United States, in the Court of Claims for $2,858,798.62; and in the *twenty-first* paragraph it is alleged, "that the Choctaw Nation at its last general Council, (referring to the session of the Council held in February, 1888,) passed certain acts or votes to the effect of appointing the said McKee, *the agent of the said Nation to receive from the United States Treasury any sums of money which might be appropriated to pay the judgment of the Court of Claims;* and that under said authority the appellant had drawn from the United States Treasury thirty per cent. of said judgment.

These paragraphs clearly state a case and demand against the Choctaw Nation, and not against the appellant; and the averment is, that the appellant, in receiving said thirty per cent. of said amount, *was receiving it as the agent of the Choctaw Nation.* It is very clear that if the appellant received the money of said Nation, *as its* agent, he did not receive it *as a trustee*, either for said Nation or for said Latrobe.

The law upon this subject is stated with great clearness in the case of *In Re* Ayres, 123 United States, 443, where a large number of authorities upon this question are reviewed at length, and it is there stated at page 488:

> "That where the defendants who are sued as officers of the State have not a real but merely a nominal interest in the controversy, *the State appearing to be the real defendant, and therefore an indispensable party, if the jurisdiction does* not fail for want of power over the parties, *it does fail as to the nominal defendant, for want of a suitable subject matter.*"

In the cases of *New Hampshire* vs. *Louisiana*, and *New York* vs. *Louisiana*, 108 U. S., 76, this Court held that "it would look beyond and through the nominal parties on the record to ascertain who were the *real parties to the suit;* and the Court, in those cases held, that while the suits were *nominally* in the name of the two States that had brought the suits, they were in fact for the use and benefit of certain individual citizens who had transferred their claims to the States that brought the suits in order to enable them to bring their suits in this Court.

This principle is further illustrated in the case of *Hagood* vs. *Southern*, 117 U. S., 52. In that case the State of South Carolina was the real party in interest, but was not nominally a party. The State was a party to the contracts which the complainants in that case sought to enforce, and the performance of which *by the State* was decreed in that case. The things required by the decrees to be done and performed are the very things which when done and performed

constituted a performance of the alleged contract by the State. The State, it was held, was not only the real party to the controversy, but the real party against which relief was sought by the suit; and for that reason it was held that the suit could not be maintained.

The same principles are affirmed by this Court, in the case of *the State of Louisiana* vs. *Jumel*, 107 U. S., 711.

In that case it was held that the Treasurer of the State is not a trustee of moneys in the State Treasury; "*he hold them only as the agent of the State; and that if there was any trust the State was the trustee*, and unless it could be sued, the trustee could not be enjoined."

To the same effect also is the case of *Branch* vs. *The Mason and Brunswick R. R, Co.* 2 Woods R., 385, 389.

The Choctaw Nation was entitled to the money appropriated under the terms of the treaty between the Government of the United States and said Nation. The independent municipal existence of the Choctaw Nation is acknowledged by that treaty. In collecting the money and disbursing it said Nation acted in its political capacity. The agent of this political entity, called the Choctaw Nation, was entitled to the same immunity from suit in the District of Columbia as the agent of any other power coming to said District would be to collect money appropriated to it. No suit will lie against an agent of a distinct political Government, when service of his principal cannot be had under the law.

These principles are stated with clearness and irresistible force in the following authorities:

In the case of *Twyross* vs. *Dreyfus*, 5 Law Reports, (N. S.) Chancery Division 605, the case is stated in the sylabus as follows:

> "The plaintiff was the holder of bonds at 6 per cent. interest, issued by a foreign republic through the defendants, who were *their agents in England*, by which the foreign republic, upon the national faith, pledged the general revenues of the republic, and especially the free proceeds of the guano imported into the United Kingdom, after the engagements contracted on them were covered, and bound itself in all the contracts which it might enter into for the sale of the guano to set aside in each half year a sum sufficient for the service of the half year, and after such service was secured to dispose freely of the surplus. The plaintiff brought an action on behalf of himself and all other holders of the bonds, stating in his claim that the republic had from time to time forwarded to the defendants large quantities of guano for the purpose of paying the interest on the bonds, which they refused to apply to that purpose, and threatened to apply in satisfaction of a lien claimed by themselves; and he claimed a declaration that he and other bond holders had a claim upon the proceeds of the guano, in priority to any claim by the defendants. He also alleged that the foreign republic made no claim to the proceeds of the guano, but offered to make it a party if it should so desire.
>
> "The defendants demurred to the statement of claim, on the ground that the plaintiff had no charges on the proceeds of the guano, and also on the ground of want of jurisdiction, and want of parties:

"*Held.* That no fiduciary relation was alleged between the defendants and the plaintiff; that the guano being the property of a foreign government, the court had no jurisdiction to attach it or the proceeds of the sale thereof; and that the defendants being agents of the foreign government could not be sued in the absence of their principal."

The Vice Chancellor, in deciding the questions raised by the demurrer, used the following language:

"It (the money) is not sent to them to be treated and set apart and dealt with as a fund in their hands, so as to create any relation whatever between them and the bond holders. There is no trust impressed upon it, no equitable assignment created by the transaction which is represented, taking it to be truly represented. Therefore, that being so, there is neither trust, nor equitable assignment in the case, and it does not even approach the case of *Gladstone* vs. *Musurus Bey*, where there was a sum actually deposited by actual consent for a special and particular purpose between the parties, and which sum the court thought it could deal with. The observations of the Lord Chancellor in *Morgan* vs. *Lariviere*, with reference to that and other cases, would seem to show that he considered that, apparently under such circumstances as those in *Gladstone* vs. *Musurus Bey*, it might be considered that there was something amounting to a trust. I cannot find any statement whatever in this statement of claim that amounts to an assignment or trust, or anything which changed the property in any way in the guano or in the proceeds of sale. There was no interest in realty in the Guano as such in the bondholders, his only interest under this statement was in the proceeds of the sale of the guano and

not in the guano itself. That being so, and there being no trust, no equitable assignment, it would seem that the case of *Morgan* vs. *Lariviere*, as decided by the House of Lords, is a very formidable difficulty in the way of the plaintiffs in his case, because the Lord Chancellor there, and the other Judges, seem to consider it was essential for the purpose of giving the plaintiff there any interest in the fund itself, that there should be a trust or equitable assignment, and subject to that it remained under the dominion of the owner.

"The plaintiff's assertion is that the government have got a fund at their bankers—their own bankers who may be in London; they consider the fund properly forming part of their exchequer for the purpose of paying these sums out of it; they do not make any claim to it; and we will ascertain, in the absence of the principals, how much is due to us and how much is due to the others; what other claims there may be upon it; we will have all this determined in an action without the presence of the principal debtor.

"I hold that this cannot be done; that it is essential in a case of this kind that the principal debtor should be here, even though he may have said, 'I do not make any claim to this fund.' I say so because, looking at the nature of the contract and engagement to pay, I do not think there is that which amounts to an equitable assignment or trust, or that anything has been done to divest the property out of the Republic of Peru, so as to enable this court to deal with it without having before it the person entitled to that property, to which, moreover, as I read the claim, they are necessary parties, notwithstanding there may be other demands which may exhaust the whole of it. They may have an interest in seeing that the fund is properly dealt with, and in reference to the continuance of the proceedings in the action which has been instituted by these plaintiffs."

This decision was affirmed, on appeal, and Jessel, Master of the Rolls, used the following language upon the questions there considered:

> "You cannot sue the agent in the absence of the principal; the principal is the Peruvian Government. You cannot sue the Peruvian Government at all, and therefore you cannot sue its agents. There is no question of trusteeship; it is simply a case of agency.
>
> "JAMES, L. J. said: 'You cannot sue the Peruvian Government, and it would, in my opinion, be a monstrous usurpation of jurisdiction to endeavor to sue a foreign government indirectly by making its agents in this country defendants and then saying: 'You have got money of the government and you ought to apply that to satisfy our claim.' That really would be indirectly making the foreign *government* responsible to the jurisdiction of this court."

In *Gladstone* vs. *Ottoman Bank*, 9 Jurist (N. S.,) Part I, 246, the case is stated in the sylabus as follows:

> "The court has no jurisdiction to interfere with the Sovereign Acts of a foreign government.
>
> "Therefore, in the case of *two* inconsistent grants of the same subject-matter, made by the same foreign sovereign authority, the court cannot aid parties claiming under the first grant, against claimants, though within the jurisdiction, acting under the second grant."

WOOD, V. C., in sustaining the demurrer, said:

> "I cannot entertain any doubt upon this bill. I think it is quite clear that this engagement,

entered into with a foreign government, upon which alone the plaintiff's rights stand, is not an engagement to which this court can give any effect, or against the breach of which it can give any relief. From beginning to end the bill hangs upon the statement, (no doubt consistently with the fact,) that this grant upon which the plaintiff's stand, is the act of a foreign government; in other words, a foreign government has entered into a concession or made a grant, which, and which only, gives to these plaintiffs the right which they now claim.

"Now, upon that right, the case raised by the bill is this, that the court acting upon the jurisdiction, which it always exercises over contracts, and which authorizes the court to say that one individual having contracted with another, shall not do anything in derogation of that contract, the court acting upon the same jurisdiction, is to say that a *third* person with knowledge of the contract between the other two, shall not assist the one of them to defeat his engagements. Upon these principles the court is now asked to act, where one of the parties to the original engagement is the sovereign power of another country. Unless I am prepared to hold that—that is a contract which can be enforced by this court—it seems to me, inasmuch as all the rights of the plaintiffs stand upon that contract, that it is quite impossible I can hold that if the sovereign power chooses to act in derogation of those rights, which were granted by his first sovereign act, I can interfere to prevent the derogation of the right. I cannot interfere with the soverign power, and if I cannot interfere with the principal, how can I interfere with the person endeavoring to defeat the right which the sovereign power has granted by his first act?"

It requires only a brief consideration of the record to demonstrate the conclusive force and applicability of the principles so clearly declared in the above authorities to the case presented by the record here.

1. The bill in its *fourth* paragraph, and as the foundation of all the rights asserted by Latrobe, sets forth a contract made between the Choctaw Nation and John T. Cochrane, for the payment to said Cochrane of thirty per cent. of certain moneys which he should collect from the United States *as the agent and attorney of the Choctaw Nation.*

2. The bill in its *seventh* paragraph states that *the Choctaw Nation*, subsequent to the rebellion, and subsequent to the date of the contract with Cochrane employed Latrobe "as their counsel and professional *advisor in all matters, including the "net proceeds claim"*, appertaining to their rights and claims against the United States, *for which said Nation agreed to pay him a reasonable compensation.*

3. Although the above allegation is the foundation of all *the rights asserted by Latrobe in this suit*, the testimony of Latrobe, and other evidence in the record, shows that statement to be untrue; for it is shown that the appellee had no employment as an attorney for the Choctaw Nation subsequent to the making of the treaty of 1866, except in connection with Cochrane, and under the Cochrane contract. Latrobe had been employed by the Choctaws and Chickasaws to aid them in preparing the treaty concluded between the United States and said Nations on the 28th day of April, 1866. He was paid by said Nations in full for that service *one-third part*

of $100,000. The two Nations paid for securing that Treaty $200,000; and of that snm $100,000 was paid to the delegates of the two Nations who had negotiated the treaty on behalf of their respective Nations. The other $100,000, paid by said Nations for the purpose above stated, was divided equally between Latrobe, Cochrane and Douglas H. Cooper, each of them receiving *one-third* of $100,000.

These delegates of said Nation, and their vigilant assistants in negotiating said treaty, of whom Latrobe was one, having received $200,000 of the money of said Nation, and divided it between themselves, of course had the deepest affection for each other; and the lawyers and claim agents of the combination imagined that there would come to them a large increase of wealth, by continuing an association which in a few weeks had brought them such rich returns. It was, therefore, according to the testimony of Latrobe, proposed that the association should be continued.

The testimony of Latrobe states how the arrangement between these parties was to be continued, in the following language:

> "I am speaking from memory, and I may be mistaken, but my belief at this moment is that after that part of my business during which I represented the Indians—Choctaws, and Chickasaws—Mr. Cochrane, apparently influenced by what I had already done, told me of his having a contract for thirty per cent. of the net proceeds, and it was then that he asked me to aid him. I then considered myself interested with Mr. Cochrane and Genl. D. H. Cooper, *in the net proceeds of the claim to the extent of Mr. Cochrane's interest in it.*
>
> * * * * * * *

"My recollection is that Mr. Cooper and Mr. Cochrane and I were present together when Mr. Cochrane spoke of the net proceeds claim, and said he wanted me to aid him in the prosecution of it, and I agreed to help him."

"Q. Do you know what portion of this 30 per cent. he was to give you?

"A. Yes, sir; it was to be divided equally between Cochrane, Cooper and myself. (Record, p. 43.)

This witness, being cross-examined upon this subject, testified as follows:

"Q. Now, when did you make your agreement with Cochrane; how long after the negotiation of this treaty was it you made your agreement with Cochrane?

"A. I could not fix the date. I cannot attempt to fix the date.

"Q. You say your agreement with Cochrane was never put in writing?

"A. Not that I am aware of; not that I can now recollect. I have seen it stated in writing, but not that I could recollect as being signed by Cochrane and myself.

"Q. Well, then, you never had any employment, with reference to the prosecution of the net-proceeds claim, except through the instrumentality of Cochrane?

"A. Never. He was *functus officio* when the treaty was made.

"Q. After that time you were working with Cochrane under his contract, as you have understood it; was that so?

"A. Well, I was working for the Indians, under authority confirmed by them, and it recited in one of the papers, which I have read this evening, which seems to me to be exactly the fact, that I was working for the Choctaws, for the net proceeds.

"Q. But you had no agreement with the Choctaw Nation for that specific service, did you, or for any compensation for that service, did you?

"A. My claim entirely grew out of Cochrane's claim.

"Q. Exactly. That is what I want to get at.

"A. Whatever Cochrane was entitled to I considered myself entitled to a portion of it.

"Q. And that portion was one-third?

"A. My recollection is that it was one-third. I think the other one-third went to Cooper, and then it came to be Cooper and Mix." (Record, p. 74.)

This evidence clearly establishes the fact that whatever compensation Latrobe was to receive for services rendered to the Choctaws subsequent to the date of negotiating the treaty of April 28th, 1866, was to be paid out of Cochrane's contract with the Choctaw Nation. Latrobe had no employment by the Choctaw Nation in connection with the prosecution of any Choctaw claims except in connection with Cochrane, and under the provisions of the contract made by Cochrane with the Choctaw Nation. He had no employment by the Choctaw Nation under which he was to receive "a reasonable compensation." If, however, he had been employed by the Choctaws upon a *quantum meruit*, and not under the contract with Cochrane, by which he was to receive a specified sum, measured by one third of the thirty per cent. to be paid to Cochrane, the result is the same. *The suit is brought upon a contract made with the Choctaw Nation*, and seeks to recover compensation under a contract which required that Nation to pay when the contract was performed a specific sum of money out of its treasury. The suit,

therefore, is a suit against the Choctaw Nation, and upon the contracts alleged to have been made with said Nation.

4. This contention is also justified by the averments of the *twenty-first* paragraph, which are to the effect that the Choctaw Nation "has appointed the appellant *the agent of said Nation to receive from the United States any money which might be appropriated by Congress to pay the judgment rendered against the United States in favor of the Choctaw Nation.*"

5. This contention is not at all weakened by the averments of the *thirteenth* paragraph of the bill, which avers that McPherson, executor of Cochrane's estate, agreed on the 14th day of September, 1866, to pay Latrobe $75,000 for services rendered and to be rendered by him under his employment by the Choctaws.

It is very clear from the contract made between Latrobe and McPherson (Rec., pp. 66-67), that Latrobe understood that McPherson was to receive the money with which he was to satisfy his agreement with Latrobe, out of the funds of the Choctaw Nation only as a result and consequence of the performance of the stipulations of the contract between Cochrane and the Choctaw Nation, and these stipulations Judge Black was to perform under his contract with McPherson dated November 8th, 1866.

This is made exceedingly plain, not only by the averments of the *eleventh* paragraph of the bill, but by the terms of the explanatory contract made be-

tween Latrobe and McPherson on the 14th of September, 1868, and made an exhibit to the answer of John D. McPherson, and is admitted by Latrobe on his cross-examination. (Rec., pp. 10, 11, 12, 33, 76, 77.)

The Choctaw Nation was, therefore, a necessary party to the bill filed against the appellant. That Nation had a right to know whether the contract under which Latrobe asserted the right to receive the sum of $75,000 had been performed in such manner as to render the Choctaw Nation liable to pay to Cochrane, or Black, or McPherson, or Latrobe any sum of money whatever under said contract.

It being clear, upon these considerations, that this suit is in its nature and legal effect a suit against the Choctaw Nation, it necessarily follows that said Nation was a necessary party to this suit.

The complainant, as is shown by paragraphs *seven* and *thirteen* of the bill, bases his cause of action on two inconsistent grounds.

First. It will be seen from the statements of said pargraphs, and from the record, that complainant placed his alleged cause of action on two grounds, the *first* of which is stated to result from the fact that he was employed directly by the Choctaw Nation as their counsel and professional advisor in all matters, including the net-proceeds claim, and that said nation promised to pay him for his services in said matters a reasonable compensation. That under this employment he entered upon the discharge of his duties as such counsel. *Second*, he alleges that "subsequent to the making of the contract with Judge Black, and the approval thereof by the Choctaw Nation—all of which was without his knowledge and

consent—he had treaties and conversations with McPherson, the executor of Cochrane, under which it was agreed that he should receive $75,000 in full for all his services in and about said business of said Nation, out of the first money which should be received by McPherson on account of said claim. That under said treaties he gave his consent to the employment of Judge Black; and that complainant's services continued until the time McKee interposed in the business, which was about July, 1870, and after that time his services were not needed, and he did but little.

Concerning the *first* alleged employment, the Supreme Court of the District of Columbia had no jurisdiction. The contract alleged to have been made, as stated in the fourth paragraph, was exclusively between complainant and said Nation, and cannot be judicially inquired into and determined in a controversy to which that Nation cannot be made a party.

b. The Choctaw Nation is not liable to be sued upon its contracts in the courts of the United States.

The Choctaw Nation is a political community having its own separate existence, its own constitution and laws, and its own peculiar form of government; but it is dependent upon and subject to the control of the United States. It is not a State within the meaning of that term as used in Article XI of the amendments to the Constitution. It cannot maintain an action in the courts of the United States. It can enter into no treaties except with the United

States, nor enter into any contracts without the consent of the United States; although its right to make contracts which were for its own benefit, had not been prohibited when the Cochrane contract was made. It is a dependent political community, subject to the permanent authority of the United States. It has been declared to be a domestic dependent community, and has no more right to sue or to be sued than any territory of the United States, subject to the exclusive jurisdiction of Congress would have the right to sue, or be subjected to suit.

Worcester vs. *Georgia*, 6 Pet., 515;
Cherokee Nation vs. *Georgia*, 5 *Ibid*, 1;
United States vs. *Kagama*, 118 U. S., 375, 379;
Choctaw Nation vs. *United States*, 119, Ibid, 27;
Cherokee Nation vs. *Kansas Railway Company*, 136 Ibid, 641, 653.

In the last two of the cases above cited, acts of Congress had expressly provided that the suits there instituted might be maintained. The first was authorized to be brought in the Court of Claims; and in the second, jurisdiction was conferred upon the United States Circuit and District Courts for the Northern District of Texas, the Western District of Arkansas, and the District of Kansas, "over all controversies between said Southern Kansas Railway Company, and the Nations and Tribes through whose Territory the said Railway shall be constructed."

The suit made by the bill filed against the appellant, being a suit to enforce contracts made by the Choctaw Nation, and said Nation being a necessary party to this suit, but not being legally subject to or

liable to suit, the Supreme Court of the District of Columbia should, for that reason, have dismissed the bill filed against the appellant by said Latrobe.

Shields vs. *Barrow*, 17 How., 130, 145;
Coiron, et al. vs. *Millandon et al.*, 19 Ibid, 113, 115;
Ober vs. *Gallaher*, 93 U. S., 199, 208.

B. Even if the bill had been filed against such necessary parties as were subject to the jurisdiction of the court and liable to suit, still the bill contains no averments or statements which constitute a cause of action within the equitable jurisdiction of said Court.

The above proposition is warranted by a consideration of the averments of the bill filed in the above cause. The bill states no case of equitable jurisdiction; and such jurisdiction cannot be acquired either by the averments of any of the answers to the bill, or by any evidence that may have been introduced to sustain the averments of the bill as filed.

This proposition is elementary, and is stated in Story's Equity Pleadings, sections 257, 262, 264.

The following cases recognize and affirm these principles:

Jackson vs. *Ashton*, 11 Peters 249;
Lamon vs. *McKee*, 18 D. C. Repts., 446, 458.

Having the elementary principles stated in the above authorities as safe and useful guides in our

examination, it is appropriate that those averments of the bill, which are assumed to state a case of equitable jurisdiction, should be carefully examined and considered. This is done, in order that the Court may be relieved of the labor of an examination of the irrelevant questions which are beyond the scope and purpose of the bill as revealed by its averments.

The grounds of equitable jurisdiction, which it has heretofore been contended are stated in the bill, are as follows:

1. That the contracts made between Cochrane and Black, and the appellant and Blunt, and the Choctaw Nation, dated February 13th, 1855, November 8th, 1866, and July 16th, 1870, created a special fund in which Latrobe had a specific interest, and out of which, under his contract with McPherson, as executor of Cochrane, dated September 14, 1868, he was entitled to be paid the sum of $75,000 for services it is alleged he rendered for the Choctaw Nation in the prosecution of its claims against the United States.

2. That by the contract made between the appellant and Blunt and the Choctaw Nation, the appellant became a trustee for Latrobe, and as such trustee became liable to pay to said Latrobe the sum of $75,000; but, if for any reason he is not entitled to that sum, then in the language of the twentieth paragraph of the bill, "the said McKee is bound in equity and justice to fully satisfy and pay over to this complainant a fair and just compensation for the services which he (said Latrobe) has heretofore rendered in that behalf."

3. That said Latrobe "is entitled to the protection of the Court and to its aid, to prevent the said McKee from leaving the jurisdiction of the Court, and to prevent him from taking the said fund, or any part thereof, beyond the jurisdiction of the Court."

4. These are the only grounds of equitable jurisdiction disclosed in the bill, unless the *prayer* for the appointment of a receiver is of itself, and without regard to the averments of the bill, sufficient to confer equitable jurisdiction.

The *prayer* of the bill, however, cannot be invoked as the statement or averment of such facts as would confer jurisdiction, unless the bill itself contained such averments as would justify the Court in appointing a receiver.

The bill, in its averments, does not show either the creation or the existence of any fund in which Latrobe had either a specific or a general interest, out of which he was entitled to be paid either the sum of $75,000 or any other amount as a compensation for the services he pretended to have rendered to the Choctaw Nation in the prosecution of its claims against the United States. It states no facts which constituted the appellant a trustee for Latrobe. It states no facts which would authorize a court of equity to grant an injunction or *ne exeat* against the appellant, which would restrain him from taking either the money he had drawn from the Treasury or himself beyond the jurisdiction of the Court. It contains no averments which would authorize the Court to exert its equitable power to appoint a receiver.

a. As to the existence of a special fund, and the interest of Latrobe therein.

The contract between Cochrane and the Choctaw Nation was only an ordinary contract between an attorney and his client *for the payment of a contingent fee*, which was to be paid "of and out of any and all moneys obtained by and paid to said Nation;" and that fee was to be thirty per cent. of every and all claims which the said Cochrane should collect as attorney for said Nation. Cochrane died before he had performed the contract; but he had secured to the Choctaw Nation certain sums of money under the Treaty of 1855, as follows: $600,000 for what was known as the leased district, as provided in Articles 9 and 10 of that Treaty; and for arrearages due on account of annuities paid under said Treaty, $92,258-40; and, under an act of Congress approved March 3, 1861, $250,000, and out of these sums he had been paid 30 per cent. of the amounts thus secured and paid to the Choctaw Nation.

Speaking of this contract, Mr. Justice Cox, of the Supreme Court of the District of Columbia, used, in the case of *McKee* vs. *Cochrane et als.*, 17 Washingington Law Reporter, pp. 219, 220, the following language:

> "The services to be rendered by Cochrane, and stipulated for, *were his personal services and skill.* His authority under his power of attorney could not be delegated nor assigned to any one else. If he had chosen to withdraw from the service he could not have claimed anything under his contract. The contract *was an entire one*, and compensation was only to be paid

upon services, *and it contained no provision for a pro-rata allowance.*"

Cochrane having died, the Choctaw Nation consented to an arrangement with Jeremiah S. Black, to which McPherson, who was Cochrane's executor, was a party, for the continuance by Black of the services which were to be performed by Cochrane; but Black, after an ineffectual effort to secure the payment of the balance of the money due to the Choctaw Nation, abandoned the case, without having secured any money to the Choctaws under that contract. Up to this point, therefore, the scheme of the bill is, to create a special fund, for the payment to Latrobe out of contracts which were never performed, and out of which no fund could be created for any purpose, *except upon the precedent condition that the contracts had been performed.*

It appears from the averments of the answers to the *fourteenth* paragraph of the bill, made by the legal representatives of Thomas A. Scott, and these statements are justified by the evidence, as follows:

> "That subsequent to the transactions stated in the *fourteenth* paragraph of the bill, the said J. S. Black found embarrassments thrown in the way of his collection of the award, which were liable to prove prejudicial to the same. He had been led to suppose when he undertook the collection that his right to do so would be undisputed, and that in case of collection, the only claims upon the money would be those specified in his assignment of November 8th, 1886.
>
> "Instead of this being the case, he found that there were others claiming the position which he had been told he alone would be entitled to

occupy. Claims were also set up to share the fee to be collected other than those provided for in his contract. The result of this, finally, was that he consented to retire from the management of the case." (Record, p. 36.)

In a characteristic letter written by Judge Black, in 1883, and made an exhibit to the answer of the above-named parties, and proved and put in evidence, he states the reasons for *his* abandonment of the case, in the following language:

"Colonel Scott bought and paid for a portion of the Choctaw Claim. I told him that there was no reason to believe that it would not be paid immediately, or very soon, and my advice was based on the assurance of the Secretary of the Interior, and the Commissioner of Indian Affairs, that an appropriation would be estimated for, and sure to be made.

* * * * * *

"Within a few weeks afterwards I was infinitely surprised to learn that divers other persons claimed a right to the place which I had thought I had occupied alone. I could not keep them out, and I could not stay in with them. In fact, the whole lobby took after me and the Indians. The chiefs surrendered, and so did I. The lobby had its own way, and I went wholly out of the case. I threw up my contract and was released by the Indians, who did not come near me again." (Rec., pp. 37, 38.)

The evidence put into the record by Latrobe (pp. 45, 46, 47, 105 to 115, 147 to 152,) shows, if important, who composed the lobby to which Judge Black's letter referred.

It is to be observed, as somewhat remarkable, in view of the pretensions now asserted on behalf of Latrobe, that in the agreement between him and McPherson made on the 14th of September, 1868, the said Latrobe is described as "the general agent of the said Nation in the City of Washington in the management and control of such business relations as the said Nation has with the United States, *and in his character as such agent has also engaged parties to aid in the prosecution of said Net-Proceeds Claim.*" (Rec., p. 66.)

The question is too clear for contention that in neither Cochrane's contract, the assignment thereof to Black, nor in the agreement between McPherson and Latrobe for the payment of $75,000, was there any special fund created; and that there was no assignment or transfer of any interest in any fund to Latrobe which he could enforce *as an equitable assignment* in a court of equity.

It is claimed, however, in the *twentieth* paragraph of the bill, that if the court should hold the contract between the appellant and Blunt and the Choctaw Nation (dated July 16, 1870,) *valid* "*contrary to the expectations*" of said Latrobe, then by the terms of said contract itself any moneys which came into the hands of McKee by reason of the said contract, *or any subsequent arrangement founded thereon, the said McKee is bound in equity and justice to pay over to said Latrobe*" *not* $75,000, *but* "*a fair and just compensation for the services rendered by him.*"

There is in the contract made by the Choctaw Nation with the appellant and Blunt no promise, undertaking or agreement that Latrobe should be paid by the appellant out of any funds which the appel-

lant should receive from the Choctaw Nation by reason of the performance of the contract by the appellant and the payment to him by the Choctaw Nation of the money which would become payable thereon by virtue of such performance.

The only promise which that contract contained which was outside of the undertaking to collect the money due to the Choctaws from the United States, and pay the expense incident to such collection, was expressed in the following language:

> "The said Blunt and McKee to pay Mrs. John T. Cochrane five per centum from the thirty per centum before referred to whenever they shall receive the same; *and the said Blunt and McKee further agree to adjust the claims of all parties who have rendered service heretofore in the prosecution of said claim*, UPON THE PRINCIPLE OF EQUITY AND JUSTICE, ACCORDING TO THE VALUE OF THE SERVICES SO RENDERED."

This was a personal agreement and obligation of the appellant and Blunt with the Choctaw Nation. It was not for the benefit of Latrobe. It vested in no one any interest in the money which might become payable under that contract. It was not an assignment or dedication of any part of the money which they might receive from the Choctaw Nation in consideration of the performance by them of their contract with the Choctaw Nation, and could at any time thereafter be modified by the parties who made it.

The above provision of that contract, so far as the appellee acquired any rights under it (*if he could acquire any rights under it*), was ineffective to create or constitute *an equitable assignment* in his favor

of any part of the money received by the appellant from the Choctaw Nation. That Nation had no power or right to create any lien upon the money payable on that contract in advance of an appropriation to pay the judgment rendered in favor of the Choctaw Nation by the Court of Claims.

The requisites of *an equitable assignment* of an interest in a fund out of which an attorney asserts the right to be paid for services rendered by him in connection with the prosecution of a claim or the collection of a fund is now so thoroughly settled by the highest authorities as to render elaborate discussion of the question unnecessary.

The following authorities consider the essential requisites of an equitable assignment of such an interest in a fund as would confer upon a court of equity jurisdiction to enforce the assignment as a *lien* upon the fund.

In *Wright* vs. *Ellison*, 1 Wall., 16, the suit was, by a bill in equity, brought by an attorney to recover commissions upon the amount awarded to Joseph Baker by the commission appointed under the convention concluded between the United States and Brazil on the 27th of January, 1849. The court, in that case, used the following language:

> "The matter seems to have been left to rest upon the principle of *quantum meruit*, and to be settled by the agreement of the parties when the business was brought to a close. The doctrine of equitable assignment is a comprehensive one, but it is not broad enough to include this case.
>
> "*It is indispensable to a lien thus created, that there should be a distinct appropriation of the*

fund by the debtor, and an agreement that the creditor should be paid out of it."

The above provision of the contract of the appellant and Blunt, any adjustment they were required to make was to be made upon the principle of *quantum meruit*, for they agreed to adjust the claims of parties who were included in the above provision "according to the value of the services rendered."

In *Trist* vs. *Childs*, 21 Wall., 441, the controversy also related to a claim for services rendered by an attorney in the prosecution of a claim before Congress. The compensation he was to receive was entirely dependent upon the contingency of success. Congress finally appropriated $14,559.90 in payment of the claim. The attorney sought to recover out of the said sum, as compensation for his services, the sum of $5,000, and he filed his bill to enjoin his client from receiving from the treasury the money which Congress had appropriated for its payment. The Supreme Court of the District of Columbia, upon hearing on demurrer, dismissed the complainant's bill; but that decision was reversed in General Term and a decree rendered there in favor of the complainant, from which decree an appeal was taken to this court; the judgment of the General Term was reversed. In considering the questions presented in that case, this court used the following language:

> "It is well settled that an order to pay a debt out of a particular fund belonging to the debtor gives to the creditor a specific equitable lien upon the fund, and binds it in the hands of the

drawee. A part of the particular fund may be assigned by an order, and the payee may enforce payment of the amount against the drawee.

"But a mere agreement to pay out of such a fund is not sufficient. There must be an appropriation of the fund *pro tanto*, either by giving an order or by transferring it otherwise in such manner that the holder is authorized to pay the amount directly to the creditor without the further intervention of the debtor.

"Viewing the subject in the light of these authorities, we are brought to the conclusion that the appellee had no lien to the fund here in question. The understanding between the elder Child and Trist was a *personal agreement*. It could in no wise produce the effect insisted upon. For a breach of the agreement the remedy *was at law*, not in equity, and the defendant had a constitutional right to a trial by jury."

These principles are recognized and affirmed in the following cases:

Dillon vs. *Barnard*, 21 Wall., 430;
Porter vs. *White*, 127 U. S., 235, 245.

These questions are also considered in the case of *Wood et al.* vs. *Dickinson*, 17 Wash. Law Reporter, 99, where Mr. Justice Cox, in a very elaborate opinion, reviews the cases upon the subject of equitable assignments, or contracts which attempt to create an equitable assignment which would operate as a lien which could be enforced in equity. It was there held, as the result of the discussion of that case, that by reason of the provisions of Section 3447 of the Revised Statutes, no assignment of an interest in a claim against the United States, whether as payment

of the fee, or commission for collecting the claim, or for any other purpose, could be sustained as an equitable assignment which could be enforced by a suit in equity.

The reasoning of the court in that case is based upon the theory that under that statute the power to make any assignment which will operate to create a lien upon the fund appropriated is withheld until the payment of the claim has been authorized by an appropriation, and a warrant drawn for the payment of the amount appropriated.

It is exceedingly plain, therefore, upon the principles of the above authorities, that the contract of the appellant with the Choctaw Nation was not such an order or appropriation by the Choctaw Nation of any money which should come into the hands of the appellant, under his contract, as would be in law an equitable assignment to Latrobe of any part of the fund received by the appellant from the Choctaw Nation in payment for the services rendered by the appellant in the collection of the money paid by the United States to the appellant as the agent of the Choctaw Nation, or otherwise.

b. The appellant, neither by the averments of the bill filed against him, nor upon the contract of July 16, 1870, *nor by the Choctaw statutes of February* 25, 1888, *is shown to have assumed the duties or incurred the obligations of a Trustee for the appellee.*

The Court which rendered the decree from which this appeal is prosecuted, declared that as to Latrobe the appellant was Trustee; and that the trust was created by the contract made by the Choctaw Nation

with the appellant and Blunt, on the 16th day of July, 1870, and by an Act of the Choctaw National Council, approved February 25th, 1888.

The bill makes no claim against the appellant under that contract, nor under the statute to which the Court referred; but on the contrary that contract is declared to be invalid if there is any meaning in the following language of the *twentieth* paragraph of the bill, which is as follows:

> "*That, if, contrary to the expectation of the plaintiff*, it should be held by the Court here, *that the said contract of the said Pitchlynn, Blunt and McKee is a valid contract*, then, even by the terms of the contract itself, any money which came into the hands of the said McKee by reason of the said contract, or any subsequent arrangement founded thereon, the said McKee is bound in equity and justice *to fully satisfy and pay over to the complainant a fair and just compensation for the services he has rendered in that behalf; and that the said McKee ought to be charged as a Trustee holding funds for the benefit of this complainant.*"

The above language is a specific allegation that the contract made by the Choctaw Nation with the appellant and Blunt is an illegal contract.

"I denounce the contract with McKee as void," says Latrobe in the above language, "and I expect the Court to so decide; but, if I am mistaken, and the Court shall hold the contract legal, binding, and valid, then I am entitled to assert compensation for the services rendered by me to the Choctaws; and to be compensated therefor by the appellant under the provisions of the contract which I denounce," is the

unmistakable meaning of the above language of *the twentieth* paragraph of the bill.

In Daniels Chancery Practice, Vol. 1, page 369, it is stated that a mere allegation that a defendant is a trustee for the plaintiff, not supported by the facts stated, is insufficient and will not prevent a demurrer.

In the case of *Lamon et als.* vs. *McKee et als.*, 18 D. C. Repts., 446, 464. the Supreme Court of the District of Columbia was required to pass upon the sufficiency of a bill containing substantially the same averments, and denouncing the same contract.

In that case, Mr. Justice Hagner, delivering the opinion of the Court, used the following language:

> "A plaintiff is not at liberty to claim that an instrument is fraudulent and void, and then claim under it. He must decide beforehand whether he intends to claim under it or against it, and not to shift his position in the way attempted here. A suitor cannot be allowed "*to blow hot and cold*" after this fashion."

In the *twenty-sixth* paragraph, the averment that the appellant is a trustee for Latrobe is as follows:

> "That if the transfer of the Cochrane contract by McPherson to Black, is for any reason invalid, that such invalidity cannot affect complainant's rights in and to said fund "but, on the contrary, he is entitled in equity and good conscience to be paid for his labor out of its proceeds, to wit, said judgment, *and that said McKee, by virtue of said agreement, is trustee for the benefit of this complainant.*"

The foundation and seat of the trust asserted against the appellant is, therefore, by the bill stated to be contained in the contract made by the Choctaw Nation with the appellant Blunt.

The Court, in its opinion in this case, declared that the contract of appellant with the Choctw Nation and the Act of the Choctaw Nation approved February 25th, 1888, *constituted the trust;* but the bill filed against the appellant asserts nothing in aid of the alleged trust against McKee under the provisions of that act. That act is in evidence, and is a part of the record, (Record, pp. 143, 144, 145,) and as it is assumed by the court which rendered the decree herein to form an important link in the written evidence by means of which an express trust and the duties and responsibilities of a trustee are fixed upon the appellant, its provisions and its purpose, as expressed in its language, will be considered in connection with the contract set out in the *nineteenth* paragraph of the bill.

A. AS TO THE CONTRACT WITH THE APPELLANT AND BLUNT.

The following facts shown by the record, reveal the condition with which the Choctaw Nation was confronted when it summoned the appellant and Blunt to aid them, and made the contract which is the foundation of the trust asserted in the bill filed against the appellant.

1st. The contract with Cochrane had been made, and he had rendered such service as secured the Treaty of June 22d, 1855. He had collected for the

Choctaws under the provisions of that Treaty $692,-258.40; he had secured an appropriation for the payment on account of the award made by the Senate in favor of the Choctaws, under the Act of March 2, 1861, the sum of $500,000, of which sum $250,000 was paid in money, and $250,006 was to be paid in bonds. The bonds were never issued, but the money part of the appropriation was paid. The Choctaws paid Cochrane *thirty per cent.* of all these sums. Cochrane had aided the Choctaws and Chickasaws in negotiating the Treaty of April 28th, 1866, for which service he, Latrobe and Cooper were paid $100,000, which was divided equally between them. Cochrane died on the 21st of October, 1866, having been paid, according to his agreement, for all services rendered by him to the Choctaws, to that date.

2. The contract with Judge Black had been made and abandoned by him, for reasons heretofore stated.

The contract made between Cochrane's executor and Judge Black having been made without the knowledge or consent of Latrobe, there existed between him and Judge Black antagonism in regard to the prosecution of the case and the apportionment of the compensation to be paid by the Choctaws.

This antagonism between Latrobe and Black is admitted by Latrobe in his testimony where inquiry is made of him in reference to the services of Judge Black, and is as follows:

> "Q. Did Jeremiah S. Black operate with you in 1867 and 1868?
>
> "A. Jeremiah S. Black represented the interests, as I understood it, of Mr. Tom Scott.

"Q. Did he at that time represent the Choctaws, as you understood it?

"A. I could not say who he represented. He did not tell me. *I only knew that he was antagonizing me.*

"Q. He was antagonizing you?

"A. *He was antagonizing me at that time;* not antagonizing the Choctaws, *but the claim for the compensation.* (R., p. 101.)

3d. This record furnishes abundant evidence that neither Latrobe, nor his associate lobyists and partners, Cooper and Mix, had accomplished any useful results to the Choctaws between September 14, 1868, and July 16. 1870. They were making war on Judge Black, and finally succeeded in driving him out of the case. This record very clearly reveals the character of the work which Latrobe, Cooper and Mix had done in the prosecution of the Choctaw Claims between 1867 and 1870. The services they assume to have rendered, as shown by the record, do not seem to have been of that character which would inspire the Choctaws with any confidence in their ability, or furnish the slightest foundation for the assertion of any claim for compensation against the Choctaws.

4th. There was at that time no obligation upon the Choctaws to recognize the existence of any contract with Cochrane, or with Black, as his successor, or with Latrobe. The death of Cochrane, and the abandonment of his contract by Judge Black, necessarily terminated the relations of those who claimed to represent the Choctaws under the Cochrane contract. Pitchlynn, whom Latrobe recognized as rep-

resenting the Choctaws, and "*their leading man*," repudiated the pretensions of Latrobe and his valuable assistants Cooper and Mix, and had taken charge of the prosecution of the case himself. The Choctaw Nation was therefore at liberty, without violating the rights of any persons with whom it had previously made express contracts, to make the contract with the appellant and Blunt.

The rule for the interpretation of this contract, and of its separate and distinct provisions, is neither obscure nor doubtful. Its intention, meaning and purpose are to be ascertained by a consideration of the language used by the parties who signed the contract. Where the words of the contract, or of a law, or treaty have a plain and obvious meaning, all construction in hostility with such meaning must be excluded.

Green vs. *Biddle*, 8 Wheat., 1.

The contract must be construed as a whole. The words are to be given their usual and common signification, and the language used must be read in the light of surrounding circumstances, the situation of the parties, the object of the contract, and that construction given which most nearly conforms with the intention of the parties.

Knowlton vs. *Oliver*, 28 Fed. Rep'r, 516;
Nash vs. *Towne*, 5 Wall., 689;
Brawley vs. *United States*, 99 U. S., 168.

The general and accepted rule in the interpretation of all contracts is to put such construction upon them as will effectuate the intention of the parties, if such intention be consistent with the principles of law.

United States vs. *Grundy*, 3 Cranch, 337;
United States vs. *Gurney*, 4 Ibid., 333;
Bradley vs. *Wash. Steam Packet Co.*, 13 Pet., 89;
Slater vs. *Emerson*, 19 How., 224;
Cramp & Sons' Ship Building Co. vs. *Sloan*, 21 Fed. Rep'r, 561.

The *intention* of the parties to this contract, when sought in the meaning of the language used, is not doubtful; and that intention, as thus revealed, shows nothing more than an undertaking on the part of the appellant and Blunt to take up and continue the prosecution of the Choctaw Claim for a specific compensation, payable when the claims were collected, and indemnify the Choctaw Nation against any liability to pay money to any parties for services alleged to have been rendered in the prosecution of said claims previous to the date of that contract.

The Choctaws had a clear conception of the value of the services that had been rendered to them in the weary contest for a recognition of their rights which they had carried on against the United States. They selected John T. Cochrane as the only one of their attorneys who, previous to that date, had rendered them useful service. They realized that by his death all right to further compensation by his widow and heirs had ceased, because his contract was *entire*, and, being unperformed, no right to further compensation could be asserted under it.

They understood also that by an arrangement between Black and McPherson and Scott, Cochrane's estate had received, and, if Black had performed his contract, would have received such further benefits

as would have amounted in all to $150,000. They realized the fact that by the abandonment of the case by Black, all the benefits which it was expected would have been secured to Cochrane's estate had been lost. They desired to make a practical recognition of the value of the services of that attorney, whose intelligence and earnest efforts had secured for them the benefits of the Treaties of 1855 and 1866, and to make further compensation for his family. The Choctaws therefore required appellant and Blunt, *when they should receive the money* which might become payable under their contract, to pay the amount specified therein to the widow of that attorney whose fidelity, usefulness and ability the Choctaws thus specially recognized. There was no legal consideration for this provision which the Choctaws thus made for the widow of their deceased attorney. The contract they had made with Cochrane in 1855 had been terminated by his death; and with his death all obligation on the part of the Choctaws to make further compensation for his services ceased.

It is plain that the Choctaws, when they made the contract with the appellant and Blunt, recognized no one of those who had made unsuccessful efforts to collect their claims, as entitled to even equitable consideration. They refused to recognize any one except Cochrane as entitled to consideration from them; and when they required that the appellant and Blunt should adjust the claims made against the Choctaws, by "*parties*" who had rendered services, in the prosecution of their claims previous to the date of their contract with the appellant and Blunt, they did not name Latrobe as one of the parties whose unfounded claim was to be "adjusted," but only

the claims of parties who had in fact rendered services for which the Choctaws might be legally liable to make compensation; and these claims were to be adjusted "according to the value of the services rendered."

Latrobe rendered no service to the Choctaws previous to July 16, 1870, for which he was not paid in full. This provision of the contract was not sufficient to create as against the appellant any *trust* which a court of equity could enforce. It was void by reason of its uncertainty.

This principle is stated in Story's Equity, Vol. II, Sec. 979. It is as follows:

> "Courts of equity carry trusts into effect only when they are of a certain and definite character. If, therefore, a trust be clearly created in a party, but the terms by which it is created are *so vague and indefinite that Courts of Equity cannot clearly ascertain either its objects or the persons who are to take, then the trust will be held entirely to fail.*"

It sufficiently appears from the facts to which the attention of the Court has already been directed, that at the time the contract with the appellant and Blunt was made there existed against the Choctaws no legal or moral obligation to pay Cochrane, or Black, or Latrobe any compensation for any services rendered by them in the prosecution of the Choctaw claims, for the reason that the rights of each of them were dependent upon the performance of express and entire contracts which were never performed, and under which they could assert no legal claim to compensation.

There was, therefore, no consideration for the trust as between Latrobe and the Choctaws, or between the Choctaws and the appellant and Blunt.

The rule in such a case is stated in Story's Equity, Vol. II, Sec. 973, as follows:

> "Uses or trusts to be raised by any covenant or agreement of a party must be founded upon some meritorious or valuable consideration; for courts of equity could not enforce a mere gratuitous gift, or a mere moral obligation. Hence it is, *that if there be a mere voluntary executory trust created, courts of equity will not enforce it.*"

There was neither a legal nor a moral obligation on the part of the Choctaw Nation to pay Latrobe $75,000. It never agreed to pay him that sum or any other. He claims that sum for the reason that McPherson, upon considerations heretofore stated, had agreed to pay him that amount; but those considerations were not of such legal or moral force as are required to create a valid contract, or establish a trust. The sum he was to receive from McPherson, as shown by the contract, was entirely dependent upon the successful prosecution of the claim and the receipt of the money by Black; and as these events never happened, Latrobe had no right to demand from the Choctaws, or from the appellant, or from McPherson, the sum of $75,000. It is evident, therefore, that so far as Latrobe was concerned there *was no consideration for the trust* as between *him* and the Choctaw Nation; and if the trust fails for that reason against the Choctaws, it cannot be asserted against the appellant.

The following propositions are stated in respect to the contention that there are any provisions in the contract made by the appellant and Blunt with the Choctaw Nation which constituted the appellant a trustee for Latrobe.

a. In order to make McKee a trustee for Latrobe the obligation of trust must be in writing—it must be definite—it must state the particular persons who are to take under the trust and the proportions which they are to take.

It is not claimed in complainant's bill that his claim against McKee was definite under his contract with the Choctaw Nation; he was to have such sum as was reasonable. Under the Black & McPherson and Scott contract, Black was to pay to Cochrane's executor $75,000.

The complainant's contract with McPherson shows that though $75,000 was mentioned as the amount, it was to be paid out of the money coming to the executor under the Black contract, and not otherwise. If complainant falls back on the McKee contract, it declares that McKee should adjust the claims of all parties who have rendered services, upon the principles of equity and justice, according to the value of the service rendered. Under neither of these sources of compensation relied upon by Latrobe, is the amount which he was to receive certain. The maker of the trust, if any existed, it is conceded, is the Choctaw Nation.

[Perry on Trusts, pages 70, 71 and 72, and note to Sec. 83, declares that the terms of the trust must be declared by the party creating the trust, and not by the *cestui que trust.*]

The trust relied upon by Latrobe, if intended, is fatally defective in its declaration, for the reason that it does not purport to state the proportion which Latrobe was to receive from McKee, nor does it disclose the names of the beneficiaries. (Same authority, Sec. 85.)

It is claimed here that the trust is in writing, and if so it is void unless definite.

Perry on Trusts, Sec. 82.

b. If the McKee contract were binding, it is only binding at law to the extent of the language used in it, and parties to it.

The appellee, in his bill, alleges that under the McKee contract, McKee is bound in equity and justice to fully satisfy and pay over to complainant a fair and just compensation for the services which he had theretofore rendered in that behalf. If this position be sound complainant had a cause of action against McKee in 1870, immediately on the execution of the contract. The only question that could arise under it was the extent of appellee's recovery. He states that when the Choctaws employed him they agreed to pay him a reasonable compensation for his services. A suit on a contract for *quantum meruit* is a suit at law. Under the statutes of the United States a court of equity has no jurisdiction to entertain a suit at law. The statutes of the District of Columbia provides for attachment in certain cases, especially where the debtor is about to abscond with his property. If appellee's definition of the McKee contract and his rights thereunder is correct, McKee was clearly liable at law to appellee for a reasonable

compensation for appellee's services, and the law afforded the amplest means for enforcing that liability, and as a consequence this bill must fail for want of jurisdiction in the court below to entertain it. It does not present a suit in equity. If, however, appellee could sue in his own name on the contract, his suit is an action at law for a reasonable compensation for his services.

c. The alleged promise of McKee to adjust the claims of parties who had rendered service in the prosecution of the Choctaw claims previous to the date of the McKee contract is void at law. There was no consideration for it.

The promise by a solicitor in chancery to pay the costs of a suit instituted by him without any consideration for such promise is *nude pact* and cannot be enforced against him.

Files vs. *McLeod*, 14 Ala., 611.

Equity, no more than law, will enforce a mere gratuitous undertaking, however just it should be performed.

Littlejohn v. *Patillo*, 2 Hawks, (N. C.) 302;
Washington, etc. Bank v. *Farmers Bank*, 14 Johns (N. Y.) 62.

A promise in writing to pay the debt of another, acknowledging past consideration, viz. land conveyed to such other person, but not at the promisor's request.

Chaffee v. *Thomas*, 7 Cow. (N. Y.), 358.

So the promise of an attorney to pay a debt out of the money received by him is void and of no effect.

Taylor v. *Bates*, 5 Cowen, 376.

The promise of a son to pay the debts of his father, is *nudum pactum*.

Parker v. *Carter*, 4 Munf., (Va.) 273.

The claim does not allege that on account of the alleged promise of McKee he released any claim that he had against the Choctaw Nation. He does not allege that he rendered any service under the McKee contract. If he had any claim at that time it was against the Choctaw Nation and not McKee. If the contract required McKee to pay it there must be some consideration for the promise of McKee.

McKee could not be made a trustee at that time, because there was nothing which he took into possession as trustee. No such trust could be raised by the subsequent payment of the money.

Barrett v. *Dougherty*, 32 Penn., 371;
Nixon's Appeal, 63 Penn., 279.

The rights of the appellee under the contract of McKee did not grow into maturity as work was done by McKee under the contract. Whatever they were they were completed on the signing of the contract by McKee. He is not named in the contract as a beneficiary; he never accepted the contract; he parted with no consideration on account of the contract, and hence no obligation arises under it in his favor either in law or equity.

d. The appellee must recover, if at all, on the theory of the case made by him in his bill, and against the appellant in the capacity in which he is sued.

He cannot be sued as agent and held liable as trustee, nor *vice versa;* an agent is not a trustee; an agent represents and acts for his principal; a trustee is a person in whom some estate, interest or power in or affecting property is vested for the benefit of another.

Anderson's Law Dictionary, p. 1057;
Taylor v. *Davis*, 110 U. S., 334.

If plaintiff seeks a benefit under the McKee contract, he must take it as he finds it. Under that contract the relation of trustee and *cestui que trust* does not exist. There was not vested in McKee an estate, interest or power in and affecting property for the benefit of complainant or any one else. McKee got no title under that contract to any property theretofore belonging to the Choctaw Nation. Under the decisions cited in this brief he did not even get a lien on the judgment which he was instrumental in procuring. There was nothing that vested in him any right to which a trust estate could attach. The most complainant can claim is, that McKee had a lien on the judgment for his services as counsel, and that he, complainant, had a lien on that lien. The law of liens has never been carried to the extent here claimed. The law does not superimpose upon the lien of one person a second and more distant lien of another. Under any view that may be taken of this contract there is not even an inchoate right in it to anything that may result from it. The record shows, however, as herein quoted, that the money which came to McKee's hands was not paid on the contract at all, but under the specific appropriation made by the Choctaw Nation in payment of McKee's

personal claim, consistent with the act of Congress appropriating the money by the United States to said Nation.

The complainant in his bill declares that the Choctaw Nation at its last general council passed certain acts or votes to the effect of appointing the said McKee *the agent* of the said Nation to receive from the United States Treasury any sums of money which might be appropriated to pay the judgment of the court of claims, or at least 30 per cent. thereof. This allegation declares the *capacity* in which McKee received the money paid by the United States to be that of *agent* of the Choctaw Nation. Under such an allegation no decree against him as trustee of the estate in which complainant is beneficiary can be rendered. It is in effect a decree against the Choctaw Nation; and that Nation, as already demonstrated, is not subject to the jurisdiction of this court.

e. The complainant in this case has not built up, by the allegations of his bill a privity between himself and McKee, and does not stand in the relation of a beneficiary under the McKee contract with the Choctaw Nation. Nor does he show any consideration moving to McKee.

The McKee contract is made with the Choctaw Nation exclusively. All its provisions, if binding at all, are binding only between McKee and the Choctaw Nation. It is claimed by the appellee that at the time the McKee contract was made the Choctaw Nation was then and there indebted to the appellee, and that the provision in the McKee contract

which required Blunt and McKee to adjust "the claims of all parties who have rendered service heretofore in the prosecution of said claim upon the principle of equity and justice according to the value of the services so rendered," applies to appellee, and, notwithstanding appellee does not base his cause of action in his bill on this provision, yet, nevertheless, he now claims that the Court was justified in giving him a decree on the theory that the above quoted provision of the McKee contract carried over to the appellee a benefit under the McKee contract, which he, the appellee, could sue upon and enforce. This theory cannot be maintained.

In the case of the *Second National Bank of St. Louis* vs. *The Grand Lodge of Free Masons*, this Court say:

> "But where a debt already exists from one person to another a promise by a third person to pay such debt being primarily for the benefit of the original debtor and to relieve him from liability to pay it (there being no novation) he has a right of action against the promisor for his own indemnity, and, if the original creditor can also sue, the promisor would be liable to *two* separate actions, and, therefore, the rule is that the original creditor cannot sue."

The contract with McKee was made for the sole benefit of the Choctaw Nation, and is enforcible, if at all, by it. This provision of the McKee contract if binding between McKee and the Choctaw Nation, operated to justify the Choctaw Nation in declining to pay McKee until the Choctaw Nation was satisfied with what McKee had done under it. The appellee does not pretend that he was the sole beneficiary

under that provision of the McKee contract as he interprets it. He declares that *other persons* than those mentioned in his bill claim to have rendered valuable and important services in the prosecution of said claim for "Net Proceeds," and under such circumstances as to give them a legal and equitable right to a portion of said fund. The appellee is not able, however, to state the nature of said claims in detail or even to give the names of such persons, and neither affirms or denies the fact as to whether any of said claims constitute a legal and equitable claim upon said fund. Therefore the appellee asks leave when he shall have discovered the said persons that he may be allowed to make them parties hereto, and to insert words setting forth the claims of such persons, as he may be informed, in order that all such claims may be fully and finally determined and settled in this cause.

This paragraph of the bill presents a smokey and obscure conception of complainant's theory of the case; first, he claims an equitable lien, for services, on the judgment recovered by the Choctaw Nation; secondly, he claims an assignment *pro tanto* of the claim to certain persons for his benefit; and, third, if he should be disappointed in both of these positions, as he seems to anticipate, and if, contrary to his expectations, as stated in his bill, that the McKee contract should be held valid, then he wishes to assemble the lobby spoken of by Judge Black as claimants under the McKee contract. This, we respectfully submit, cannot be done under any known principle of law; for the reason that the obligations of contracts are ordinarily limited to parties who make them.

The provision quoted and relied upon in the argument, though not relied upon in the pleadings, by the appellee, gave, in terms, no right of recovery in favor of appellee against McKee. No privity exists between appellee and McKee under that provision.

Under appellee's interpretation of the contract McKee would be bound to pay the claims of third persons, whether he recovered anything or not; for he claims in his bill as follows:

> "And if the court should also determine that the settlement and adjustment of the claim of the complainant and others was not a condition *precedent* to the acquiring of the right to prosecute the claim and receive remuneration therefor under the said contract, then, in that case, even by the terms of the contract itself, any money which came in the hands of said McKee, by reason of said contract, or any subsequent arrangement founded thereon, said McKee is bound in equity and justice to pay to this complainant a fair and just compensation for the services which he has heretofore rendered in that behalf."

Appellee's interpretation of the McKee contract, therefore is, that whatever McKee was bound to do under it in respect of appellee's rights was to be done by McKee as a condition *precedent* to acquiring the right in McKee to prosecute the claim. If this theory be true, then McKee never acquired any right under the contract, and never having put it into operation in any way, it remains a dead letter to this hour, under which no one got any rights. The mere drawing and signing of a paper for future service or for future action under it, does not make in

all cases a binding contract unless some steps are taken in the performance of the requirements of the written paper.

The contract between the appellant and Blunt and the Choctaw Nation either went into operation as a matter of law or it did not. If McKee could acquire no rights under it, as appellee insists by the paragraph of his bill above quoted, that he could not, until he *had adjusted* the claims of appellee and others, then no legal obligation arose under the contract in favor of anybody until it was vitalized by the discharge of the condition precedent, which appellee alleges never took place. McKee could not be bound, even in justice or equity, to do that which could only become binding by the legal activity of the contract itself.

f. The appellee cannot claim under McKee's contract which requires that McKee adjust the claims of all parties who have rendered service heretofore in the prosecution of said claim upon the principles of equity and justice according to the value of the services so rendered, because his bill is not drawn under that provision; nor was that provision made for his benefit.

The final provision of McKee's contract, above quoted, does not name the persons whose claims are to be adjusted, nor the amount of them, nor the extent of services readered. As is heretofore argued the omission to do so makes said provision of said contract nugatory as a trust. If, however, it can be contended that it can be made to support a suit against McKee by the appellee the present suit was not predicated of said provision.

The bill is filed in behalf of Latrobe alone, and not in behalf of himself and other persons interested in said fund to the extent which they had contributed service in the collection of the claim, and to the extent which justice and equity would recognize their rights, as mentioned in said provision of said contract. If a person has a divisible right in equity to a fund, he may sue in his own name for that divisible right. If, however, his right is indefinite, and is mingled with the rights of others to the degree that the rules of equity must be employed in distinguishing the amount which one is entitled to as against others and the value of the separate services is undetermined, a bill must be filed in behalf of the complainant and others so interested with him.

It is said in *Burt* v. *Keyes*, 1 Flip, 61, that it is the right of an antagonistic defendant to have all the material facts on which relief is sought specifically set forth in the bill, that facts may be admitted or controverted by answer. No testimony and no proofs in the case will be admitted, unless *secundum allegata*.

That case distinguished between the character of a bill filed for the benefit of the complainant, and one filed for the benefit of complainant and others similarly situated.

The discussion of the provisions of this contract, as creating a trust or as constituting the appellant a *trustee* for Latrobe, is appropriately concluded by quoting from the opinion of the Supreme Court of the District of Columbia, in General Term, in the case of *Lamon et al* v. *McKee et als.*, which was a case somewhat similar to that which is here under discussion and required a construction of the same

contracts there set up as the basis of a right to recover a decree against the appellant.

In that case the Court used the following language:

> "It is also urged at this hearing that the jurisdiction may be maintained on the theory of a *trust*. The only sections in the bill that may be asserted to embody such a claim are those we have above referred to. Again, we remark that the word *trust* is not used in the bill. But if it had been used, or the idea had been embodied in other words, it would not be enough simply to assert the existence of a trust without a sufficient statement of facts to enable the Court to determine whether the assertion that a trust existed was authorized under the light of the circumstances set forth in the bill. The law on the subject as to the necessity of such allegations in a bill is thus stated in the case of *Van Weel* vs. *Winston* 115, U. S, 237. In that case a defendant was charged with abuse of a trust, with abundant expletives of abuse. The court says: 'The bill is a long one, the allegegations are not classified, nor the true foundations of relief very clearly stated. It is full of the words fraudulent and corrupt, and general charges of conspiracy and violation of trust obligations. Mere words, in and of themselves, and even as qualifying adjectives of more specific charges are not sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or breech of trust, for which a court of chancery can give relief.
>
> "It seems to us, without now going more particularly into the examination of the particular language of the bill that it is impos-ible to say there is such a charge of the existence of a trust made, or properly supported by accompanying

statements, as would give jurisdiction to the court under this head of equitable relief.

"The charge that McKee had obtained from the Choctaws authority to draw the money *as their agent*, and that he had provided himself with apparent authority, granted by the Choctaw Nation, empowering him to do so *in their name and behalf*, and that he threatens to draw the money, is the very opposite of any charge of such a trust on the part of McKee as is now insisted upon by the complainant in argument.

"Again, we were referred to the section of the contract in 1870 with McKee, in which it is stated that Blunt and McKee are *to adjust* the claims of all parties who had rendered service theretofore in the prosecution of said claim. But we cannot perceive that this language in the contract, in the absence of any charge to that effect in the bill, when taken in connection with the language of the act under which McKee's claim and duty were defined eighteen years afterwards, could be considered as a sufficient charge of a trust as against the fund in McKee's hand to justify the court in assuming jurisdiction on that ground.

"If McKee made a contract with the Choctaw Nation under which he agreed to pay these plaintiffs the money claimed he might be held liable in an action at law, or the Choctaw Nation itself, by proper proceedings, might be forced to make good the default of their agent.

"It is a principle of equity that a trust is never implied or presumed or intended by the parties unless taking all the circumstances together that is the fair and reasonable interpretation of their actions."

2 Story's Equity, 1195.

The language above quoted was used in a case where an order had been made by Chief Justice Bingham, requiring the appellant to pay into the

registry of the court *in that case* the sum of $136,500; and upon a hearing in the General Term that order was *reversed* for the reason that the complainant's bill stated no cause of action within the equitable jurisdiction of that court.

The conclusion at which the court arrived in that case must necessarily be correct; and must be conclusive of the contention made in the case under consideration, when the following limitations upon the power of the Choctaw Nation to deal with the money payable by the United States previous to its payment are borne in mind:

1. That under the constitution (Art. I, Sec. 9) no money shall be drawn from the Treasury except under an appropriation made by law.

2. That section 3477 of the Revised Statute prohibits and makes invalid, the assignment, absolute, or conditional, of any claim against the United States, or of any interest therein, until subsequent to the allowance of the claim, and the issuing of a warrant for its payment.

It is obvious that under the limitations of the Constitution and that statute, no trust, immediate or contingent, was or could be impressed upon the money ultimately paid to the Choctaw Nation by the United States, either at the date of the Cochrane contract or at the date of the contract made with the appellant and Blunt; and no trust did arise under said contract, or either of them.

No trust can be created without power in the grantor to create it. An express trust can only spring from the conduct of the owner of the substance

out of which the trust interest arises; and where the law in a particular matter, as in this case, makes a trust impossible, and forbids assignments on powers of attorney to be executed with respect to it, such matter is legally withdraw, from the ordinary power of the owner over it. The power of the owner of the Choctaw claim to create a trust in it or to charge it with legal or equitable liens, or to give powers of attorneys concerning it was suspended and deferred by express statute until after the allowance of the claim, and the issue of a warrant for its payment. The alleged claims against the Choctaw fund urged in this case could not in law attach to the fund until a warrant had been issued for its payment. There is no pretence that it did attach after that time.

3. The act authorizing the payment and satisfaction of the judgment rendered in favor of th Choctaw Nation provides for the payment to the Choctaw Nation of the amount of the judgment theretofore rendered, from time so time, and in such sums as requisition or requisitions shall thereafter be made by the proper authorities of the Choctaw Nation to the National Treasurer of said Nation, or to such other person or persons as shall be named in the requisitions therefor.

Under this statute all contracts or agreements theretofore made by the Choctaw Nation were utterly ignored, and a specific method of payment provided in the appropriation act itself. Under this act all money drawn from the Treasury in satisfaction of the judgment rendered in favor of the Choctaw Nation, was required to be drawn by the Nation itself, through any agent to whom said Nation should give

the proper requisition. The party taking the money under such requisition took it as the money of the Choctaw Nation. No lien, equitable or otherwise, did or could attach to it under that act.

This act of appropriation cut out every fiber of lien or trust in favor of any and all parties. The investigation made by Congress, previous to the passage of that act, showed vast and groundless claims asserted by Latrobe and others against this fund; and if we may judge of the purpose of Congress by the language used in that act, it did not intend that any of these fabulous and imaginary claims should be acknowledged or paid by the Choctaw Nation.

B. THE ACTS OF THE CHOCTAW NATIONAL COUNCIL, APPROVED FEBRUARY 25TH, 1888, AFFORD NO EVIDENCE OF A PURPOSE ON THE PART OF THE CHOCTAW NATION TO IMPOSE UPON THE APPELLANT THE DUTIES AND OBLIGATIONS OF A TRUSTEE FOR LATROBE.

These acts, of which there are *four*, are contained in the record, pp. 140 to 145 inclusive.

> The *first* approves the memorial of Campbell LaFlore, the delegate of the Choctaw Nation, demanding from the United States the payment of the judgment rendered in favor of the Choctaws by the Court of Claims, and requested Congress to appropriate the "full amount of the said judgement and interest thereon from the date of the rendition thereof, as and for a permanent and continuing appropriation, not subject to lapse, or to be covered into the Treasury of the United States; the same to be paid over from time to time, and in such sums and at such places

as may be required, directly to the national treasurer of the Choctaw Nation, or to such agent or other person as shall be named in the requisition of the proper authorities of the Choctaw Nation; *and the proper authorities of the Choctaw Nation for the purpose of making such requisition or requisitions, is hereby declared to be the General Council of the Choctaw Nation*, or such officer or other person as shall be disignated and authorsed by an act or resolution of the said general council for that purpose."

The *second* authorized a requisition for the payment of five per cent. stipulated to be paid to John B. Luce or his representatives or assigns by the contract of the said Luce with the said Choctaw Nation, on April 26, and approved May 24, 1881; and directed Campbell LeFlore, and in case of his death or disabilty to act, then Edmund McCurtain to make requisition upon the proper authorities of the United States for the said five per cent. stipulated to be paid to said Luce or his legal representatives or assigns, out of any money appropriated by Congress to pay the judgment rendered by the Court of Claims in favor of the Choctaw Nation on the 15th day of December, 1886, for the sum of $2,858,798.62.

And the said act further provided as follows:

"And this act shall be taken and deemed an authority and request to the proper officers of the United States, that they pay the said five per cent., less the said credit of thirteen thousand dollars, directly to the legal representatives of said John B. Luce, now deceased, and to his assigns, as follows, to writ:

To Shellabarger and Wilson, of Washington, D. C., fifty thousand dollars ($50,000.)

To Titus B. Meigs, of New York city, twenty-four thousand dollars ($24,000.)

To the legal representatives of the estate of Belden Noble, deceased, late of Washington, D. C., five thousand dollars ($5,000.)

To Jeremiah M. Wilson, of Washington, D. C., one thousand two hundred dollars ($1,200).

To John J. Weed, or his assigns, one thousand two hundred dollars ($1,200).

To Samuel Stevens, of Washington, D. C., six thousand dollars ($6,000).

And to Cornelia P. Luce the executrix of the last will and testament of the said John B. Luce, deceased, the rest and residue which may remain of the said five per cent., less said credit of thirteen thousand dollars, after the payment and satisfaction of said assignments, amounting in the aggregate to eighty-seven thousand four hundred dollars ($87,400).

And the amount necessary to the payment and satisfaction of said five per cent., less said credit of thirteen thousand dollars, is hereby appropropriated for the purpose of such payment

The requisition hereinbefore provided for shall be taken and accepted as, and is hereby declared to be, such requisition as is provided for by Article XII of the treaty of 1855."

The *third* was entitled "an act to authorize requisition to be made for the payment of a portion of what may be appropriated by Congress in satisfaction of said judgment," which act provided as follows:

"That Campbell LeFlore, the authorized delegate of the Choctaw Nation, or, in the event of his death or inability to act, then Edwin McCurtain be, and he is hereby, authorized and directed for and on behalf of the Choctaw Nation, to make requisition upon the proper au-

thorities of the United States in such form as may be required by such authorities for the payment to Henry E. McKee of the sum of seven hundred and twenty eight thousand and thirty-nine dollars and sixty-five cents, to which there shall be added out of whatever may be appropriated by Congress for interest on said judgment, interest on the sum of seven hundred and fourteen thousand six hundred and ninety-nine and 65-100 dollars ($714,699.65) out of whatever may be appropriated by Congress in satisfaction of the judgment of the Court of Claims, rendered on the 15th day of December, A. D. 1886, in favor of the Choctaw Nation. The same to be paid in such sums and at such times and places as shall be requested by said McKee, and such requisition when made shall be taken and accepted as and is hereby declared to be such requisition as is required by the twelfth artiticle of the Treaty of June 22, 1855.

The *fourth* contained in substance the following recitals, to wit:

1st. That the authorized delegates of the Choctaw Nation did, on the 16th day of July, 1870, "in good faith and to secure and protect the best interests of said Nation in regard to the Net Proceeds Claim, enter into a contract with Henry E. McKee and J. G. Blunt, for the prosecution of said claim of said Nation against the United States for a contingent fee of thirty per cent. of any amount they might recover and collect from the United States for the benefit of the Nation on account of said claims; the said Blunt having died, the said McKee associated with himself John B. Luce and other able and experienced lawyers, to assist him in the prosecution of said claim under said contract.

2d. That a separate contract was entered into with the said Luce by the Choctaw Delegates on the 26th of April, 1881, for the payment to him of five per cent. of the 30 per cent. to be paid to said Blunt and McKee, under said contract of July 16, 1870.

3d. That said McKee, by reason of his own labors and the aid and assistance rendered by his associates in the prosecution of said claims, has recovered a judgment against the United States in favor of the Choctaw Nation for the sum of two millions eight hundred and fifty-eight thousand seven hundred and ninety-eight dollars and sixty-two cents ($2,858,798.62), and the said McKee and his associates are making proper efforts to secure from Congress an appropriation for the payment of said judgment.

The said act then provides, in section one, as follows:

> "That the said contracts and each of them are hereby acknowledged and recognized as valid and subsisting contracts with the Choctaw Nation, duly authorized by law, and the service required from said McKee and the said Luce under the said contract having been fully performed by them, they are, by reason of the stipulations of said contracte, entitled to be paid by the terms of said contract, and the right to such payment out of the proceeds of said judgment according to the provisions and terms of said contracts, is a right protected by the Choctaw constitution."
>
> The *second* section of said act provides: "that in order to pay, satisfy, and discharge the obligations of the Choctaw Nation by the said McKee and Luce under the said contract, there is hereby appropriated out of whatever sum may

be appropriated by Congress for the payment of said judgmeut, thirty per cent. of the amount thereof, and that out of said thirty per cent. five per cent. shall be paid to the legal representatives of John B. Luce *deceased;* and twenty-five per cent. shall be paid to Henry E. McKee his executors, administrators, and assigns."

The *third* section recities that provision has already been made for making requisitions by Campbell LeFlore, or, in the event of his death, disability or refusal to act, then by Edmund McCurtain, for making the payments of said thirty per cent. as above provided, and it was therefore enacted;

"That if, for any reason, there should be a failure to make payment of the said moneys so specifically provided for in the said acts to the said parties respectively, as in this and said other two acts is provided, then it shall be the duty of the national treasurer of said Choctaw Nation to make requisitions in favor of said parties respectively as provided for in said two acts for the payment to them respectively, of said sums named in said acts, and said requisitions when made shall be taken to be the requisitfons contemplated and required by article 12 of the Treaty of 1858."

"And as it cannot now be known in what form provision will hereafter be made by Congress for the payment of said judgment and interest, it is further enacted that if the said appropriation is so made as that payment cannot be made as contemplated by said two acts above named, and so made as to require the payment of the said money into the treasury of the Choctaw Nation, or so as to require its payment otherwise than as contemplated in said two acts of said General Council heretofore passed, then it is hereby made the duty of the National Treas-

urer of said Nation to pay, and he is hereby directed to pay, or to cause to be paid (by drawing such checks, drafts, or warrants, or by doing such other acts as may be necessary), to the said parties respectively, or to their legal representatives or assigns, the several sums of money hereinbefore, and in the said other two acts, referred to and required to be paid, *it being the intention of the said General Council, by said acts and this act, to provide for and to secure to the said parties respectively the sums due to them respectively, as provided in this and said other two acts;* and to provide for making such payments in conformity with and in obedience to whatever form or mode of payment may be rendered necessary by said appropriation by act of Congress yet to be made."

The *fifth* section of said act provided as follows:

"That the payments herein directed to be made shall, when made, either under this act or said other two acts hereinbefore referred to, be taken and accepted as full and complete payment and final discharge and satisfaction of all the contracts and obligations of the Choctaw Nation to any and all attorneys for services rendered to the Nation in the prosecution of said claims against the United States."

The *twelfth* article of the Treaty of June 22, 1855, provided that so much of the fund as should become payable to the Choctaws under Article XI and XII of that treaty, as the proper authorities of the Nation shall ascertain and determine to be necessary for the payment of the just liabilities of the Tribe, shall, on their requisition, be paid over to them by the United States. It will be easily understood, therefore, that these several statutes were intended

by the Choctaw Nation not only as a legal determination and legislative declaration of the meaning of the words "the proper authorities of the Nation," but they were also intended to make specific provision for the payment of such obligations as they recognized as being due from them to those persons whose services had secured the payment of their claims. It was therefore declared in the *first* of these acts "that the General Council of the Choctaw Nation, or such officer or other person as shall be designated or authorized by an act or resolution of the said General Council for that purpose, shall be the proper authorities of the Choctaw Nation for the purpose of making such requisition.

It is then provided in the *second* and *third* of said acts that five per cent. of the amount appropriated by Congress should be paid to the legal representatives or assigns of Luce, in satisfaction of his contract dated April 26, 1881, and *twenty-five* per cent. should be paid to McKee, in satisfaction of the obligations of the Choctaw Nation under the contract of July 16, 1870. It is to be observed that the acts authorizing requisition to be made for the amounts payable to Luce and McKee under their respective contracts *were absolute and unconditional.* They were authorized to receive the money appropriated by said acts for their benefit, unburdened by any conditions or obligations put upon them by the Choctaw Nation. If the legislation of the Choctaw Council of that date, had ended with the enactment of these statutes, it would not be seriously contended that either of them added anything to the obligations assumed by McKee under the terms of his contract. These statutes were enacted for the purpose of pay-

ing the debts due from the Choctaw Nation upon contracts made with Luce and McKee, and not for the purpose of putting upon the appellant additional obligations.

It will be observed as an interesting part of the history of this memorable controversy, that the Choctaws by an act passed February 3, 1874, (Rec., pp. 137, 138,) attempted to put an end to the dissensions, which Latrobe and others who assumed to have been employed by the Choctaws to continue the prosecution of their claims had created. The appellants met with no resistence from Latrobe and his allies subsequent to the passage of that act, except as hereinafter stated, until his work had been practically completed. The appellant had secured the passage of an act conferring jurisdiction of the case upon the Court of Claims. He had, with the aid of assistants whom he had employed, prepared the case for hearing in that court, and it had been there heard and determined. He had taken an appeal from the judgment of the Court of Claims to this court; and upon a hearing of the case here, he had secured a reversal of the judgment of the Court of Claims, and a decision in favor of the Choctaws which entitled them to $2,858,798.62; and upon the mandate of this court, the Choctaws had judgment for that sum in the Court of Claims, on the 15th day of December, 1886. The amount secured to the Choctaw Nation by this judgment was $776,237.77 more than had even been claimed from the United States for the Choctaw Nation in any memorial, statement or argument prepared or presented in behalf of the Choctaws by Latrobe and his associates.

Immediately after that event, or in connection with it, the Cochrane contract, which the Choctaws supposed they had terminated twelve years before, was claimed to be in existence; and fabulous claims for fees under that contract became matters of public discussion. The extent and character of the demands asserted under the Cochrane contract by attorneys whose efforts in connection with the prosecution of the case had not been known for more than a dozen years, were so enormous, that there seemed to be danger that a large part of the judgment which the Choctaws had recovered against the United States, would be absorbed by their payment. The subject attracted the attention of Congress, and on the 14th of December, 1886, the Senate by a resolution adopted on that date, directed the Committee on Indian Affairs, "to inquire and report to the Senate concerning claims for professional or other services made upon the Choctaw Nation, on account of certain judgments rendered against the United States." That committee discharged the duty assigned to it, and on the 28th day of February, 1887, submitted the result of its examination to the Senate, in a report which is designated as Senate Report No. 1978, 49th Cougress, 2d session. That report revealed the fact that there was asserted against the Choctaw Nation, *claims based upon the Cochrane contract*, by the following persons and for the following amounts:

1. Ward H. Lamon, as assignee of J. S. Black	$250,000 00
2. Ward H. Lamon, as successor of J. S. Black	569,374 00
3. Albert Pike, as associate of Cochrane	172,939 90

4. Thomas A. Scott, as assignee of J. S. Black	75,000 00
5. John H. B. Latrobe, assignee of Cochrane's executor	75,000 00
6. John D. McPherson, executor of Cochrnne	131,000 00
7. Chas. S. Stettauer expended under contract with Latrobe, Cooper, Davis and Fuller	40,000 00
Making a total of claims under the Cochrane contract amounting to.	$1,283,313 90

These facts furnish an easy solution of the motives which inspired the Choctaws in the enactment of the *fourth* of this series of statutes. They also furnish a key, by means of which motives of Congress may be understood when it made specific provision in the act of appropriation to keep the money appropriated to pay the judgment in favor of the Choctaws, under the absolute control of the authorities of the nation.. Congress intended, by that act, to leave the disposition of the money appropriated for the benefit of that Nation, to the authorities of that Nation, and not to the courts of the United States.

The Choctaws had also given a practical construction to the Cochrane contract, so long as they recognized it as being in existence, by paying for the services rendered according to the benefits *in money which they had received by reason of services rendered.* They did not recognize any service alleged to have been rendered by Lamon, or Pike, or Scott, or McPherson, as executor of Cochrane, or Latrobe, or Stettauer, as being of the slightest service or value to them. They recognized the fact that these claim-

ants under the Cochrane contract were denouncing the contract made with the appellant and Blunt, as illegal, unauthorized and void; and they were anxious that there should exist no controversy upon that subject subsequent to the enactment of these statutes. They therefore declared that the contracts made with Luce, and with the appellant and Blunt, were each of them "acknowledged and recognized as valid and subsisting contracts with the Choctaw Nation duly authorized by law."

They recognized the fact that the said contracts had been fully performed by the performance of the services and expenditure of money required under them. They therefore declared that—

> "The services required from said McKee and said Luce under said contracts having been fully performed by them, they are, by reason of the stipulations of said contracts *and by said performance by them of said stipulations*, entitled to be paid by the Choctaw Nation the respective amounts agreed to be paid by the terms of said contracts."

The Choctaws, in all the years of their contentions with the United States, *had paid for results* and not for services which brought them no money, or the value of which could not be determined upon or by a percentage of the amount received as a result of the service rendered. This was the practical construction which they put upon the Cochrane and Black contracts. They always paid Cochrane out of the money he had secured for them from the United States; and they proposed by this act to interpret their contract with the appellant and Luce in the

same way. They therefore, by this act, intended to provide that the appellant and Luce should be assured of the payment of the money due upon their contracts, and that there should be no failure of payment, if for any reason the payments directed to be made under the *second* and *third* of these acts should not be made as therein provided. The *third* section of the act under consideration has no other purpose, and provides for no other contingency.

The *fifth* section is assumed to impose an obligation upon the appellant more comprehensive and burdensome in its terms than that which was assumed in the contract made with the appellant and Blunt.

That language of that section, which is assumed to effect that result, is as follows:

> "That the payments directed to be made 'to the appellant and Luce, whether under said act, or under the *second* and *third* of said acts,' shall be taken and accepted as full and complete payment, and final discharge and satisfaction of all the contracts and obligations of the Choctaw Nation, to any and all attorneys for services rendered to the Nation in the prosecution of said claims against the United States."

That language imposed upon the appellant no specific duty or obligation. The purpose of that statute, as revealed by its express words, was to declare that the contracts made with the appellant and Luce were legal contracts of the Choctaw Nation; that said contracts having been fully performed, the said parties who were named in the act, the appellant and Luce, were entitled to receive the money to which they became entitled by virtue of such performance. The language of that act was a most expressive and em-

phatic denial and repudiation by the Choctaw Nation of the existence of any other claims for services rendered to the Choctaws, by attorneys not named in said act, in the prosecution of their claims against the United States. This is true upon the maxim *expressio unius est exclusio alterius.* The appellee's testator was necessarily excluded from consideration by the express language of that statute.

c. The bill states no facts which authorized the Supreme Court of the District of Columbia, to issue an order restraining the appellant from leaving the jurisdiction of said court, and taking the money which he had received from the treasury out of its jurisdiction.

The bill filed against the appellant is fatally defective in its averment of any facts which would have authorized the issurance of a writ of *ne exeat.* No such writ was applied for, and it could not have been legally issued upon the averments of the bill.

This writ is issued only in aid of an equitable proceeding. The *debt* in respect of which the proceeding is instituted must be exclusively *equitable* in character. If the debt is such as that, it is demandable in a suit at law, the writ will be refused. *The debt must be certain in its nature, and actually payable and not contingent. It will not lie, therefore in a case where the demand is of a general unliquidated nature, or in the nature of damages.*

Story Equity, Vol. II, Secs. 1470, 1474;
Graham vs. *Stockton*, 4 Blatchford, 50.

In the courts of the United States, the issuance of this writ is authorized by section 717 of the Revised Statute, only upon the following conditions:

> "But no writ of *ne exeat*, shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same, that the defendant designs quickly to depart from the United States."

The *twenty-first*, *twenty-third* and *twenty-fourth* paragraphs of the bill, contain no averments which would have authorized the issuance of that writ; nor does the bill in any of its averments state an *equitable debt* due from the appellant to Latrobe. The debt which he asserts in his bill, is by its terms primarily payable by McPherson, but ultimately by the Choctaws, on account of the assignment of the Cochrane contract to Black.

d. The averments of the bill filed against the appellant in this cause, stated no facts which authorized the court to exercise its equitable jurisdiction and power to appoint a receiver.

It is indispensable to the existence of the power to appoint a receiver, that the bill, upon which the exercise of this power is demanded, should contain a statement of the following facts:

1st. That the appellee's testator had a *clear legal right to the moneg in controversy, or some lien upon it, or that it constituted a special fund out of which he was to have satisfaction of his alleged demand;* and,

2d. That the possession of the money was obtained by the appellant through fraud, or that the money itself, or the income from it is, in danger of loss from the neglect, waste, misconduct, or insolvency of the appellant.

High on Receivers, Sec. 11.

In section 12 of the same author, the following further language upon this subject is used:

> "It is in all cases essential to the exercise of the jurisdiction that the plaintiff should have *a present existing interest in the property over which he seeks to have a receiver appointed.* And when it is apparent that he has parted with his entire interest and title to the property, the court will not interfere even though sufficient ground may be shown to have warranted the relief when the offense complained of was committed, and the plaintiff still had no interest in the subject matter."

The bill does not show legal right on the part of Latrobe to receive $75,000, or any other sum out of the money received by the appellant from the Choctaw Nation; nor does it aver the performance of any service which would entitle him to *that* or any other sum "upon the principles of equity and justice according to the value of the services rendered;" It does not show that Latrobe had any *lien* upon the money so received by the appellant. It does not show that the money so received by the appellant was a special fund out of which Latrobe was to have satisfaction of his demand. It does not aver that the possession of the money was obtained by the appellant through fraud. It does not state any facts,

by means of which the court could determine that the benefit to result to Latrobe from his recovery against the appellant, would be either wholly lost, or substantially impaired by reason of the insolvency of the appellant. An averment of these facts was indispensable.

High on Receivers, Sec. 18.

It is very clear, therefore, that upon and by reason of all the averments of the bill there was no case stated against the appellant which would authorize the Supreme Court of the District of Columbia to exert any powers which exist in a court of equity.

The counsel for the appellant have felt justified in making the elaborate discussion of those questions which relate to the jurisdiction of the court to make the decree from which this appeal is prosecuted, because the counsel for Latrobe in the brief filed by them in that court stated their propositions on the question of jurisdiction as follows:

That a court of equity has jurisdiction in the following cases:

> "1st. Under a *prayer* for injunction to preserve the fund, and to prevent the defendant from departing the jurisdiction of the cour.
>
> "2d. The appointment of a receiver to take the custody of and hold the fund.
>
> "3d. The distribution *of a trust fund* amongst creditors.
>
> "4th. To administer a trust fund placed in the hands of one person *by a debtor for the benefit of his creditors.*"

It is conceded that each of these subjects are of equitable jurisdiction; and if the bill filed against the appellant had contained a statement of such

facts as would constitute a case under either of these several heads of equity jurisdiction, the counsel for the appellant would have been relieved of this discussion.

C. The appellant was entitled to have the bill dismissed on his motion made on the 27th day of May, 1889; and it was error for the court to deny that motion.

The motion made for the purpose of securing the dismissal of the bill, assigned the following among other reasons in support of that motion :

> "1st. Because neither the said bill, nor any paragraph thereof, states, sets forth, or shows to the court by any statement or averment thereof, any cause of action against the defendant Henry E. McKee, of which this court has jurisdiction."
>
> * * * * * *
>
> "4th. Because the complainant's bill, if it states and sets forth any cause of action against the defendant Henry E. McKee, shows that the exclusive remedy upon and for such cause of action is at law, and not in equity."

It has been already shown that the jurisdiction of the court below to render a decree against the appellant cannot be sustained upon the assumption that the appellant sustained any *trust relation* to Latrobe, or ever came into the possession of any fund out of which Latrobe was entitled to be paid, or upon which he had any *lien* which could be enforced by any proceeding known to equity jurisprudence.

It is equally clear that the contract of the appellant and Blunt, if they failed to perform their agree-

ments under its provisions, would give a right of *action, if any existed in favor Latrobe, which could be enforced only by an action at law.* The obligations of the appellant and Blunt, under said contracts, were to the Choctaw Nation. It is obvious, however, that the Choctaws had no purpose in any clause of that contract to burden the appellant and Blunt with any *specific obligation*, except as therein stated, to Mrs. John L. Cochrane. It was therefore agreed for the benefit of both the Choctaws and the appellant and Blunt, as follows:

> "And the said Blunt and McKee further agree *to adjust* the claim of all parties who have rendered service heretofore in the prosecution of said claims, upon the principle of equity and justice *according to the value of the services so rendered.*"

It is evident that this understanding was also for the benefit of the Choctaws, and was to relieve them of any obligation to examine, consider, or adjust any claim for services rendered previous to July 16, 1870.

The words "equity and justice," in and of themselves have never been held sufficient to confer *equity jurisdiction*, while the other words of that clause, "according to the value of the services so rendered" immediately suggest a *quantum meruit*, and *quantum meruit* points to a declaration in assumpsit or, if the contract is under seal, to an action of covenant, and these actions are not within the jurisdiction of a court of equity.

There is no place in the forum of equity jurisprudence for the determination of the amount of

money which a lawyer shall receive for any service rendered to his client, where the amount to be paid is to be determined by a consideration of "the value of the services rendered," or, in the language of pleadings in the courts of law, "as much as he has deserved." The determination of that question, where there is neither an equitable lien, an equitable assignment, nor a trust, which would authorize the exercise of equitable jurisdiction, belongs exclusively to the courts of law.

The appellee's testator, in order to enable him to recover in an action at law, would have been required to prove the following facts:

1st. That he was employed by the Choctaws, or with their sanction, previous to July 16th, 1870.

2d. That he rendered service to the Choctaw Nation in the prosecution of their claims against the United States *previous to that dute.*

3d. That such services were not rendered by him under any express or specific contract which provided for a fixed or specific compensation; and if the services had been rendered under a specific contract which required performance, then it would be necessary to prove performace by Latrobe, and the damage resulting from non-performance by the Choctaw Nation.

4th. The value of the services rendered by him under said employment; or the damages sustained by a breach of the special contract.

It requires no argument to demonstrate the proposition that the determination of these questions belongs exclusively to the courts of law; and that

in their determination the appellant was entitled to a trial by jury. There are no facts involved in a determination of the liability of the appellant under his contract, except such as are connected with the ordinary actions of assumpsit or covenant. The bill in this case might, with propriety, be characterized as *an action of covenant* in the form of a bill in chancery. It is exceedingly plain, therefore, that for the recovery of any sum of money which became due and payable to Latrobe by the appellant under the said contract, if any sum became payable thereunder, there was a plain, adequate and complete remedy at law. In such a case the court *sua sponte* dismisses the complainant's bill. Here the infirmity of the bill filed against the appellant, was brought to the attention of the court, by an appropriate motion made in apt time. That motion should have been allowed.

Van Nortin vs. *Morton*, 99 U. S., 380;
Hurt vs. *Hollingsworth*, 100 Ibid., 100;
Buzard vs. *Houston*, 119 Ibid. 347, 351;
Thompson vs. *Railroad Companies*, 6 Wall., 136;
Walker vs. *Dreville*, 12 Ibid, 442;
Lewis vs. *Cocks*, 23 Ibid., 466;
Parker vs. *Cotton*, 2 Black, 545.

D. There are no facts stated in the bill filed against the appellant which authorized the Supreme Court of the District of Columbia as a court of equity to take jurisdiction of the case stated in the bill, upon the theory that the bill states a cause of action of which a court of equity has concurrent jurisdiction with the courts of law.

The case made by the bill reveals nothing more than an attempt on the part of the appellee's testator to secure, by a proceeding in equity, compensation for professional services alleged to have been rendered by him as the counsel and legal advisor of the Choctaw Nation; the value of the services alleged to have been rendered are to be ascertained and determined, as avered in the bill, upon a *quantum meruit.* It is compensation in damages for the breach of a contract made by the Choctaw Nation with Cochrane; and also of an alleged breach of the contract made by the appellant and Blunt with said Nation, which furnishes the foundation of the cause of action stated in the bill filed against the appellant. The bill is not filed to secure a specific performance by the appellant of his contract with the Choctaw Nation; but on the contrary that contract is repudiated, assailed, and declared void in the twentieth paragraph of the bill.

The doctrine of concurrent jurisdiction in respect of cases where the bill is filed for the recovery of a specific sum of money, as in the case under consideration, is stated in Pomeroy's Equity Jurisprudence, Vol. 1, p. 163, Sec. 178, as follows:

> "Cases in which the remedy is a mere recovery of money do not ordinarily come under the concurrent jurisdiction. Where the primary right of the plaintiff is purely legal, arising either from the non-performance of the contract or from a tort, and the money is sought to be recovered as a debt or as damages, and the right of action is not dependent upon or connected with any equitable feature or incident, such as fraud, mistake, accident, trust, accounting, or contribution, and the like, full and certain remedies

> are afforded by actions at law, and equity has no jurisdiction; these are cases especially within the sole cognizance of the law. Even when the cause of action, based upon a legal right, does involve or present, or is connected with some particular feature or incident of the same kind as those over which the concurrent jurisdiction ordinarily extends, such as fraud, accounting and the like, still, if the legal remedy by action, and pecuniary judgment or debt would be complete, sufficient, and certain that is, would do full justice to the litigant parties in the particular case, the concurrent jurisdiction of equity does not extend to such a case."

And the author states in this connection, as illustrations of the doctrine stated in the text, that where a mere pecuniary judgment at law against the debtor would be useless, because he is insolvent, or is a non-resident of the State, or has absconded or for any other similar reason, the judgment at law would be unavailing, that even in such a case the concurrent jurisdiction of equity did not exist, although each presented some peculiar feature which was claimed to be equitable, and to remove it from the exclusive jurisdiction of the law.

This doctrine is also considered in Story's Equity Jurisprudence, Vol. 2, Sec. 749, under the title of Compensation and Damages, and the same principles are stated as follows:

> "It is in cases of bills, brought for a specific performance, that the questions principally arise, as to compensation and damages being awarded by Courts of Equity; and therefore it is convenient in this place to consider the nature and extent of the jurisdiction exercised by Courts of Equity as to compensation and damages. It

may be stated as a general proposition, that for breaches of contracts, and other wrongs and injuries, cognizable at law, courts of equity do not entertain jurisdiction to give redress by way of compensation or damages, where these constitute the sole object of the bill. For wherever the matter of the bill is merely for damages, and there is a perfect remedy therefor at law, it is far better that they be ascertained by a jury than by the conscience of an equity judge. And, indeed, the just foundation of equitable jurisdiction fails in all such cases, as there is a plain, complete, and adequate remedy at law. Compensation or damages ought, therefore, ordinarily to be decreed in equity only as incidental to other relief sought by the bill, and granted by the court; or where there is no adequate remedy at law; or where some peculiar equity intervenes."

It has already been shown that the bill contains no averments which constituted the appellant a trustee for Latrobe; and that there is no lien upon the fund received by the appellant in favor of Latrobe, stated in the bill; no fraud is charged, and no prayer for the specific performance of the contract made between the appellant and Blunt and the Choctaw Nation is contained in the bill; and it is only in cases where rights are asserted in one of these clases of cases that equitable jurisdiction in courts of equity is recognized and applied.

E. The facts proved, as shown by the record, are not sufficient to impose upon the appellant either the character, duties or responsibilities of a trustee for the appellee's testator.

It has already been shown, that by the averments of the bill, the appellant cannot be charged in this proceeding as having assumed any duties as a trustee under any *express trust*, which was created by the contract made between himself and Blunt and the Choctaw Nation, and that there are no terms in the agreement which is alleged to create *an express trust*, from which any duties of a trustee under an *implied trust* can be imposed upon the appellant.

Implied trusts are those that arise when trusts are not directly or expressly declared in terms; but the whole transaction, and the words used, imply or infer that it was the intention of the parties to create a trust.

Perry on Trusts, Chap. IV, Sec. 113, pp. 115 to 120.

Courts have no power to make contracts or to create or imply trusts, at variance with the purposes expressed in the specific contract, from the terms of which an express trust is alleged to arise. Here, the trust, if any was created, was as clear, specific, definite and certain, as the parties to the contract were able to make it.

The contention is made, however, that if the case cannot be sustained on the contract of 1870, and the Choctaw act of 1888, then the appellant is a trustee by reason of the *facts*, which appear in the record and without any reference to the averments made or facts stated in the bill. The appellant is called a *trustee de son tort*, a trustee *ex maleficio;* and that, in his dealings with the appellee's testator he was engaged in such transactions as created *a resulting trust*, or a *constructive trust*, and that by means of acts,

which were in violation of the rights of Latrobe he has *imposed upon himself the duties and obligations of a trustee under one of the rtusts as thus designated;* but in considering the *facts* which are assumed to constitute the appellant a trustee, it should be kept in mind, that no trust could attach this money payable to the Choctaws until Congress had passed an act making an appropriation for its payment.

The facts which are alleged to effect this result against the appellant, are as follows:

1st. That the appellant and Blunt made their contract with the Choctaw Nation "while the complainant and said Black and others were engaged in the prosecution of said claim."

This fact is averred in the *nineteenth* paragraph of the bill; it is denied in the answer, *and is not proved.*

2d. That the appellant concealed from Latrobe the fact that he and Blunt, had made their contract of July 16, 1870, as well as the provisions of said contract.

This fact is not charged in the bill nor proved; but if it were, it is not perceived how the appellee could prove that in consequence of the appellant's concealment of this fact, he continued to render service for the Choctaws; and he avers in the 13th paragraph, that he knew McKee had become the agent of the Choctaws in July, 1870, and that "after that time he did but little."

3d. That the appellant after he had recovered a judgment in this court, and while he was endeavoring to procure such legislation from the Choctaw General Council, as would secure the payment of the

money payable to himself and Luce on their respective contracts, with the Choctaw Nation, caused to be written to a citizen and the official delegate or representative of the Choctaw Nation, a letter signed by one of his counsel, and dated February 12, 1888 (record, pp. 110, 111), which was used to influence the Choctaw Council, then in session, to enact the laws to which reference has already been made; and that said letter, and the representations therein contained exerted such influence as secured the passage of said statutes.

6th. That by certain fraudulent and false representations made by the appellant to the members of the Choctaw National Council, and by a corrupt use of money, paid to members of the Council by the appellant, the Council was induced to believe, that the appellant intended to pay *out of the thirty per cent. specified in his contract*, all the claims, whether valid or invalid, which any person might assert against him; and that by reason of the influence of that belief on the minds of the Choctaw Council, the appellant was enabled to secure the passage of said statutes, and by means thereof secure to himself the payment of the money to which he was entitled by reason of the performance of his contract; and that since he had failed to pay the claims, which it is alleged he promised to pay in order to secure the enactment of said statutes, the appellant was guilty of making "*false and fraudulent representations*," not only to the Choctaws, but lo Latrobe.

The affidavits offered in evidence to establish the fact that the appellant made the "false and fraudu-

lent representations" not alleged in the bill, are contained in the record, pp. 117, 118, 119, 120, and 122 to 134 inclusive.

So far as this case is concerned, the only question which may appropriately be considered, relates to the "false and fraudulent representations" alleged to have been made by the appellant, by means of which the rights or interests of Latrobe are supposed to have been injuriously affected. The only statement made in relation to the claim asserted by Latrobe, is contained in the following paragraph of a letter written by one of the appellant's council, as above stated, and is as follows:

> "6. John H. B. Latrobe. He looks to Mr. McPherson, executor of Mr. Cochrane, for his fee. Whatever sum Mr. Latrobe or Mr. Cochrane gets, comes out of McKee's thirty per cent."

An examination of the *thirteenth* and *twenty seventh* (mis-numbered 26 *bis*) paragraphs of the bill, justifies the assertion that there was nothing false or fraudulent in the statement above quoted; but, upon the averments of the bill, it is shown to be in accordance with the claim now asserted against the appellant.

The substance of all the testimony contained in these irrelevant affidavits, is fairly crystalized into the following statements made by the witness Hodges which is as follows:

> "It was upon the faith of this letter of attorney (Weed's) *and the representations of McKee*, that he would in good faith settle with all the other attorneys according to the principles of equity and justice, for their services and expenditures, and hold the Nation harmless, free,

and discharged from all obligations to them or any of them, either under his own contract or under the Cochrane contract. I say it was upon the faith of this letter and these representations, that the acts of February 25, 1888, were passed by the Choctaw Council."

* * * * * * *

"We understand McKee's contract bound him to settle with all other attorneys who had rendered service in the prosecution of the claim as well before the time of his contract as after. This is what he told our committee he would do, and our delegate said such was the understanding of Colonel Pitchlynn and myself. In other words, McKee was to represent all the attorneys and take the fee of 30 per cent. and settle with them all according to equity and justice; so he said, so delegate LeFlore said; so we understood McKee's contract; so we understood the letter of attorney." Record, pp. 128, 129, 130.

The statements of these witnesses, if their testimony had been admissible for any purpose, were not sufficient to fasten upon the appellant any duties or obligations which were not created by the contract of July 16th, 1870. The trust could not be built up *verbally*. It is a well established principle of equity, that to raise a trust, it must be ascertained what proportion each beneficiary is to take.

Harper vs. *Phelps*, 21 Conn., 257.

Where the intention to create an express trust does not appear, no form of words will create the trust.

Richardson vs. *Inglesby*, 13 Rich. (S. C.) Eq. 59.

It is respectfully but earnestly suggested, that before the court shall, upon this evidence, impose upon the appellant either the character or responsibilities of a trustee *de son tort*, or *ex maleficio*, there should be some consideration of the force and effect of the following facts:

1st. That when these facts transpired the appellant had completed the work required by the contract to the point where nothing remained to be done except to secure an appropriation from Congress to pay the judgment rendered by the Court of Claims in favor of the Choctaw Nation.

2d. That by this contract the appellant was entitled to receive thirty per centum of all sums recovered by him for the benefit of the Choctaw Nation.

3d. That he was engaged in the perfectly legitimate business of endeavoring to secure from that Nation, through its legislative council, such provisions for the payment of the fees he had earned under his contract as would secure their payment to him when the money should be appropriated by Congress, and paid to the Choctaw Nation by the United States.

4th. That none of these witnesses testified that the appellant made to them any promise more broadly expressive of his obligation or purposes, than that contained in his contract; and that he made none that would impose upon him the slightest obligation or duty to Latrobe except such as was contained in the language above quoted from the letter to LeFlore.

5th. That the Choctaw Council, in the acts passed which enabled the appellant to receive payment of

the fees payable under his contract did not impose any conditions upon his right to receive the money due him from the Choctaw Nation, except such as were contained in his contract.

6th. That the appellee's testator is not in this suit seeking to secure an adjustment or determination of the pretended claims asserted in his bill, "upon principles of equity and justice, according to the value of the services rendered," but on the contrary thereof he claims $75,000 under a contract made between him and the executor of Cochrane on the 14th of September, 1868; and he has not anywhere, nor at any time, asserted any other claim against the appellant, nor afforded the appellant any opportunity to contest the validity of that agreement, as determining the value of the services rendered by Latrobe, and not paid for previous to July 16th, 1870.

7th. That no contract or agreement made between the appellant and the Choctaw Nation, nor any act passed by the National Council of said Nation, in discharge of its obligations to the appellant, created or established any fiduciary relations with the appellant for the benefit of the appellee; nor did the receipt of the money by the appellant in satisfaction of his contract under the acts of the Choctaw National Council establish any fiduciary relations between the appellant and said Latrobe.

A conclusive answer to this contention that the appellant is a trustee *ex maleficio*, is found in the fact that the court below located the alleged trust in the contract of 1870, and the Choctaw Act of 1888; and not in the alleged facts above recited. No appeal was taken from this finding by the com-

plainant below; and the appellee is here affirming that the court did right in rejecting the *ex maleficio* theory.

It is equally clear that the appellant is not to be treated as a trustee *de san tort.* He did not at any time *intermeddle with the prosecution of the Choctaw Claims*, or assume the management of their prosecution without authority.

Perry on Trusts, Vol. I, Sec. 245, p. 314.

He did did not *by mistake* assume the character of a trustee, or act as such in violation of or in disregard of the rights of the appellees without authority, and when the position he occupied towards the Choctaws and the appellee did not belong to him; for his contract with the Choctaw Nation, not only authorized, but required him to do all the acts, and render the service charged as being in violation of the rights of the appellee.

Perry on Trusts, Vol. I, Sec. 265, p. 348.

There are no facts shown in the record which put upon the appellant the duties of a trustee under any resulting trust.

F. This suit cannot be maintained against the appellant upon any of the grounds stated in the bill; no sum of money came into the possession of the appellant, which in equity belonged to the appellee; nor was the appellees testator entitled to maintain any suit upon the promise made by the appellant and Blunt to the Choctaw Nation.

The contract between the appellant and Blunt, and the Choctaw Nation, is *an agreement under seal:* and

the only action which could be maintained for a breach of its provisions, in a court of law, would be the action of covenant.

It is an elementary principle, that no stranger to such contract, no person not named as a party to it, could maintain an action to recover damages for its non-performance.

In those cases where it is held that an action may be maintained by a third party for whose benefit the promise is made, the principle upon which such actions have been sustained, is stated as follows:

That if one *pay money for the use of a third person, or having money belonging to another*, agrees with that other to pay it to a third, action lies by the person beneficially interested; but when the contract *is for the benefit of the contracting party*, and the third party is a stranger to the contract and the consideration, the action must be by the promisee.

These principles are further considered in the following cases, which relate exclusively to contracts between private parties, and not to money appropriated by and payable under an act of Congress.

In *Gurnsey* vs. *Rodgers*, 47 N. Y., 233, it was declared:

> "That it is not every promise made by one person to another from the performance of which a third party would derive a benefit, that gives a right of action to such third person, he being privy neither to the contract nor the consideration; *and that to entitle him to an action, the contract must have been made for his benefit.* He must be the party intended to be benefitted."

This principle would necessarily exclude Latrobe nnless he was named in the contract, and in the act of Congress authorizing the payment of the money.

In *Vrooman* vs. *Turner*, 69 N. Y., 280–284, the same principle is stated in the following language:

> "A mere stranger cannot intervene and claim by action the benefit of a contract made betwcen other parties. There must be either a new consideration *or some prior right or claim* against one of the contracting parties, by which he has a legal interest in the performance of the contract."

The same principles are affirmed by the same court in the following cases:

Lake Ontario Shore R. R. Co. vs. *Curtis*, 80 N. Y., 219, 222;

Dunning vs. *Leavitt*, 85 Ibib., 30, 34.

If it were useful, authorities in support of these propositions could be cited in large numbers from the decisions of the various State courts.

This court has determined the question under consideration in the case of the *Second National Bank of St. Louis* vs. *The Grand Lodge of Masons of the State of Missouri*, 98 U. S., 123, 125.

In that case Mr. Justice Strong, stated the principles upon which an action, on a promise made by one party to another, by means of which *a third party*, and a stranger to the contract was to derive a benefit, could be maintained, in the following language:

> "We do not propose to enter at large upon a consideration of the inquiry how far privity of contract between a plaintiff and a defendant is

necessary to the maintainance of an action of *assumpsit*. The subject has been much debated, and the decisions are not all reconcilable. No doubt the general rule is that such a privity must exist. But there are confessedly many exceptions to it. One of them, and by far the more frequent one, is the case where, under a contract between two persons assets have come to the promisors hands or under his control which in equity belonged to a third person. Ineuch case it is held that the third person may sue in his own name. But then the suit is founded rather on the implied undertaking the law raises from the possession of the assets, than on the express promise. Another exception is where the plaintiff in the beneficiary solely interested in the promise, as where one person contracts with another to pay money or deliver some valuable thing to a third. *But where a debt already exists from one person to another*, a promise by a third person to pay such debt being primarily for the benefit of the original debtor, and to relieve him from liability to pay it (there being no novation), he has a right of action against the promisor for his own indemnity; and if the original creditor can also sue, the promisor would be liable to two separate actions, and therefore the rule is that the original creditor cannot sue. His case is not an exception from the general rule that privity of contract is required."

There was no contract ever made between Latrobe and the appellant for the payment of $75.000. There is no suggestion either in the bill, or in the evidence, that the promise contained in the contract of July 16, 1870, was made for the exclusive benefit of the appellee. If there was any debt payable to the appellee at the date of the contract, it was due when that contract was made; and the promise of the ap-

pellant and Blunt, "to adjust" the claim of the appellee for services previously rendered by him to the Choctaws, in the prosecution of their claim against the United States, was made for the exclusive benefit of the Choctaw Nation.

The appellee, therefore, upon the principles asserted in the foregoing authorities and propositions, has no right to maintain any action against the appellant upon the promise or covenant made by the appellant to the Choctaw Nation.

G. The liability of the appellant "to adjust" the claims of the appellee against the Choctaw Nation for services rendered in the prosecution of its claims against the United States previous to July 16, 1870, was measured and limited by the amount payable to Latrobe by that Nation on the above date; and if the appellee had no claim for such services which he could then enforce against that Nation, he has none which he can enforce against the appellant in this suit.

a. As to the extent and measure of the liability of appellant under the contract of July 16, 1870.

The promise of the appellant and Blunt was made to the principal debtor, the Choctaw Nation. It was not made in consideration of the fact that Latrobe was at that time a creditor of Cochrane's estate to the amount of $75,000. That promise was "*to adjust*" the claim of the appellee, if he had rendered service in the prosecution of the claim of that Nation previous to that date, "upon the principle of equity and justice, according to the value of the ser-

vices rendered." It seems exceedingly plain, therefore, that if the appellee could establish against that Nation no claim for services alleged to have been rendered by him, which it was legally liable to pay, the appellant cannot be held or charged with any liability which could not be enforced against the Choctaw Nation.

This proposition is no more than the statement of the familiar principle that a surety is discharged by reason of the existence of such facts as will discharge the original debt and release the original debtor from liability.

This proposition is asserted upon the authority of *Benjamin* vs. *Hilliard*, 23 How., 149, 167, where the principle governing the liability of a surety in such cases is stated as follows:

> "The general rule is to attribute to the obligation of a surety the same extent as that of the principal. Unless from the terms of the contract an intention appears to reduce his liability within more narrow bounds a restriction will not be imposed by construction contrary to the nature of the engagement. If the terms of an engagement are general and unrestricted, and embrace the entire subject, his liability will be measured by that of the principal, and embrace the same accessories and consequences. It will be presumed that he had in view the guaranty of the obligation his principal had assumed."

In that case, the guaranty was contemporaneous with the original undertaking, while in the case at bar there was never any agreement or undertaking by the Choctaw Nation to employ the appellee to render any service for which he claims compensation

in this suit, nor to pay any compensation for any service he claims to have rendered under an employment by Cochrane. The agreement to pay Latrobe $75,000 was made by Cochrane's executor. The fulfillment of that promise by Cochrane's executor depended on the collection by Jeremiah S. Black of the money due to the Choctaw Nation.

The same principle is asserted in the case of *Osborne* vs. *Bryce, et. als.*, 23 Fed. Rep., pp. 171, 178, where the following proposition is stated:

> "That if there is any *fact* from which a total failure of consideration for the original contract arises, the guarantor or surety has a right to avail himself of that fact."

b. As to the debt due to the appellee from the Choctaw Nation, at the date of the promise made by the appellant and Blunt.

The appellee seeks to recover from the appellant the sum of $75,000, and it is decreed that he shall be that amount, because McPherson, as Cochrane's executor, had promised to pay him that sum; and not because the services rendered by him to the Choctaw Nation previous to July 16, 1870, were proved to be worth that amount, when estimated or determined "upon principles of equity and justice according to the value of the services rendered."

The appellee in his testimony (Rec., p. 74,) shows that he was employed to assist in the prosecution of *one* of the Choctaw claims by Cochrane; and his testimony upon that subject has been quoted in another part of this argument and needs no repetition here. (Record, p. 74.)

The contract made with Cochrane was *an entire contract*, and no recovery could be had upon it without performance. The appellee having therefore planted himself upon that contract must abide by the legal consequences which would have resulted to Cochrane by a failure in its performance. Cochrane's executor refused to recognize the pretensions of the appellee, as an associate of Cochrane, and with the approval of the authorities of the Choctaw Nation, he made a contract with Judge Black to continue the prosecution of the Choctaw claims as the successor of Cochrane; but the contract with Judge Black, like the contract with Cochrane, was a contingent contract; and, the Choctaw Nation under its provisions were bound to make no payments until the contract was performed. These facts were known to Cochrane's executor and to Black; and when on the 14th day of September, 1868, the contract between Cochrane's executor and Latrobe was made, it was expressly provided, that the sum of $75,000 therein stipulated to be paid to the appellee, was to be paid "out of the first moneys that shall hereafter come into the hands of the undersingned execator of John T. Cochrane, under the contract between him and Jeremiah S. Black, and not otherwise." There is no need of discussing the proposition, that if Cochrane and Black failed to perform the Cochrane contract, there was no obligation upon the Choctaw Nation to make any compensation to either of them for such services as they did render; and since the appellee was never employed by any one having authority to represent the Choctaw Nation, he had at the date of the appellants contract, no legal demand

upon the Choctaw Nation, which he could enforce upon *a quantum meruit.*

The statement of the above propositions is justified upon the following authorities:

Dermott vs. *Jones*, 2 Wall., 1;
The Harriman, 9 Ibid., 161, 175;
Marshall vs. *B. O. R. R. Co.*, 16 How., 314, 337;
Denver vs. *Roane, Executor*, 99 U. S., 355, 361;
Darland vs. *Greenwood*, 2 Fed. Rep., 660;
Walsh vs. *Shumway, et. al.*, 65 Ills., 67;
Bunn et. al. vs. *Prather*, 21 Ibid., 217.

In the case of *Marshall* vs. *The B. & O. R. R. Co.*, the plaintiff had declared upon a special contract which the court held not only void but entire. He had also claimed in the common counts in his declaration upon *a quantum meruit*, for the value of the services rendered by him; but the court held:

> "That the plaintiff, *by the stipulations of his centract*, is estopped from claiming under a *quantum meruit*, as his *entire compensation*, depended upon his success in obtaining certain specified legislation which he acknowledged he failed to secure."

The appellee was therefore without any legal or equitable right to compensation for services rendered by him in prosecuting the Choctaw claims, under the *Cochrane contract.* The Choctaw Nation owed him no *debt* which the appellant was bound "to adjust" under his contract of July 16, 1870. There was nothing due the appellee from the Choctaw Nation at that date, for or on account of services rendered in the

prosecution of said claims upon "principles of equity and justice," because it is conclusively shown that the appellee never had any employment as an attorney in connection with the prosecution of the said claims, by the Choctaw Nation. He had no connection with the prosecution of said claims, except under his agreement with Cochrane. If he has any claim for compensation for services rendered by him in the prosecution of said claims it must be asserted against Cochrane's estate. It cannot be established as a claim which either the Choctaw Nation, or the appellant is legally liable to pay.

H. There is no evidence in the Record which is sufficient to authorize a decree against the appellant in favor of Latrobe, for the sum of $75,000, or any other sm, and the decree in his favor against the appellant should be reversed for that reason.

It has been shown that the decree made against the appellant, cannot be sustained upon the assumption that there was a liability on the part of the Choctaw Nation to pay Latrobe any sum of money for services alleged to have been rendered by him, either under the Cochrane contract, or upon the agreement between Cochrane's executor and Black. It can be demonstrated with equal certainty, that he rendered to the Choctaw Nation, no service in the prosecution of its claims, for which the appellant, "upon principles of equity and justice, and according to the value of the services rendered" was or is liable to pay the appellee the sum of $75,000 or any other sum.

The limit of time between which Latrobe is supposed to have earned this generous fee is from the date of the death of Cochrane, October 31, 1866, to the date of making the contract with the appellant and Blunt on July 16, 1870. It is evident that he did nothing but antagonize the efforts being made by Judge Black, until subsequent to the 14th of September, 1868; for the contract made between Cochrane's executor and Latrobe on that date, contains recitals which justifies this statement.

The only evidence of what was done by Latrobe in the prosecution of the Choctaw Claims between the date of the death of Cochrane and the date of the above contract, is furnished by Latrobe; and is contained in the *four* letters which are put in the record by him and printed at pp. 137 to 150 inclusive. The most casual inspection of these letters affords conclusive evidence that the only professional work that Latrobe was doing for the Choctaw Nation during these months consisted in making a vigorous effort to get himself into the case, and Judge Black out of it.

The evidence of the appreciation he had of the importance of the duties and responsibilities resting upon him as attorney for the Choctaw Nation, and engaged in the prosecution of their claims, is furnished in his letter to his associate Cooper, dated December 31st, 1868, where he reveals the progress he is making in the following language:

> "I have seen Mr. McPherson and talked net proceeds with him, but have arranged no battle. I learn from him *that the parties on that side were in so deep they must work*, and ever since our compromise for the $75,000 I have felt that

we were the second fiddle in the orchestra, and therefore have been quite willing to let others take the lead." (Record, p. 105.)

This letter reveals the extent of the interest Latrobe felt in the successful prosecution of the Choctaw Claims at that date; and there is nothing in the record to show that there subsequently came any change in the purpose expressed in the above letter. He had wrung out of Cochrane's executor a compromise by which he expected to secure for himself $75,000, without rendering any professional service, if he would only allow Judge Black to conduct the case without his impertinent interference; and he was very willing to have others "take the lead" if the payment of $75,000 was assumed. He testifies that he never appeared before Congress, or any of the committees thereof, for the purpose of making a legal argument in behalf of clients who were to pay him and his associate Cooper—*according to his own testimony—two-thirds of thirty per cent.* on $2,731,247.30, although their claims against the United States could be examined by no other tribunal, and were constantly pending there in some form from February 27, 1867, to March 3, 1881, when jurisdiction of them was conferred upon the Court of Claims. He never appeared before the Attorney General to assert the right of the Choctaw Nation to receive $250,000 in bonds appropriated for the benefit of the Choctaw Nation, and in part payment of its claims against the United States, by an act of Congress approved March 2, 1861, although the question of the right of said Nation to have said bonds issued to them had been referred by the Secretary of the

Treasury to the Attorney General on the 29th day of September, 1870, and an opinion given thereon on the 15th day of December, 1870.

Opinions of Attorneys General, Vol. XIII, p. 354.

The evidence that Latrobe did not appear before any tribunal, or officer, where he would be able to render the Choctaw Nation any useful professional service, is furnished in the following extract from his testimony:

"Q. I understood that you said you never appeared before any committee of Congress for the purpose of making an argument on the net proceed's claim?

"A. Not that I can now recollect.

"Q. Did you at any time appear before the Attorney General for the purpose of making any question there?

"A. I could recollect that; I certainly did not, because it has been the habit of my life to avoid that kind of business in making an argument, to what is known in common parlance by pushing the case by appealing——

"Q. Did you know whether the right of the Choctaws to the $250,000 in bonds had, at any time, been referred to the Attorney General for his decision?

"A. I have no recollection about that. It may have been or may not have been. I know nothing about it.

"Q. You have no recollection of having read the opinion given by the Attorney General on the subject?

"It may be possible, but I do not recollect.

"Q. You never appeared before any Congress anywhere in behalf of the Choctaws, in regard to this subject, did you?

"A. No, sir." (Record, p. 75.)

The appellee tells who his Washington associates and partners were, and the business in which they were engaged, in the following language:

"Q. Cooper and Mix were lobbyists, were they not?

"A. Well, now, I do not want to give any one that name. They were persons acting at the Indian agent here in Washington.

"Q. What was Cooper's position under the United States Government?

"A. He was Indian agent for the Choctaws and Chickasaws.

"Q. What was Mix's position?

"A. Mix had been the Secretary of the Interior, I think, had he not, or in the Indian Office, Secretary's Office, and then he was turned out, and then he and Cooper entered into an agreement connected with the Indian business; that is what I understood.

"Q. Was Mix a member of the bar?

"A. Well, he may have been.

"Q. Not to your knowledge, was he?

"A. No, sir.

"Q. Was Cooper a member of the bar?

"A. Yes, sir; Cooper was a member of the bar, but not of this bar. He was a lawyer by education.

"Q. Had he ever practiced at the bar?

"A. I never heard of him as a lawyer, sir.

"Q. Now, what was the character of service that Cooper or that Mix, jointly or severally, were expected to render?

"A. Well, sir, that I cannot tell you. I was in Baltimore, and they were in Washington, and we corresponded frequently upon the subject, constantly; and I saw Cooper; and we would talk over this whole matter, but the nature of his services here I do not know." (Record, pp. 77, 78.)

The character of the legal service, which the Washington associates of Latrobe were rendering,

at this time, and for which in connection with services rendered by him it has been decreed that the appellant shall pay $75,000, is revealed by the letters written by Cooper to Latrobe. (Record, pp. 112, 113, 114.)

The first of these letters, in point of time, is dated January 28th, 1869, and informs Latrobe that—

> "The Committee of the Senate and House, on Indian Affairs, are to meet on Monday next, to discuss the 'Net Proceeds Claim' and agree, if possible, upon a report to their respective houses under the resolution of last session. This is equivalent almost to a conference committee, and will decide the fate of the claim. Our Choctaw friends have been to me asking that you come over and help in this their hour of great need and peril. We must have a favorable report from the committee." (Record, p. 114.)

Latrobe made no response to this appeal "to come over and help us;" and the desired report was not made.

On March 30, 1869, Cooper wrote to Latrobe as follows:

> "By invitation I called on Mr. Harlan at the committee room last evening and had a free conference as to the "Net Proceeds," which he promised to thoroughly examine. He appeared friendly."
>
> * * * * * * *
>
> "The net proceeds was not reported to-day, but we hope to get it done to-morrow, and tack it on the deficiency bill reported by Mr. Fessenden to-day from the committe, on appropriations, or else bring it in as a separate bill and

try to push it thro." * * * * * * * *Our reserve* will have a council at 9.30 o'clock tomorrow, and determine what can be done in the "Net Proceeds."

April 10, 1869, he reports to Latrobe, the result of the efforts made by him and his "reserve," as follows:

"Mr. Harlan reported the Choctaw "Net Proceeds" claim to the Senate as an adjudicated one, and moved that the memorial of P. P. P. and others, with the accompanying papers, be printed and referred to the Committee on the Judiciary for examination and report. This seems a more appropriate reference than to send the papers to the Committee on Claims. It is equivalent to saying the matter is not a claim but an adjudicated account; but for greater certainty as to the legality of it, the matter is sent to the Committee on the Judiciary, all lawyers. This will give you an opportunity of appearing before such a tribunal as will no doubt suit best, and we get clear of 'lobby sharks' and 'shysters.'"

An examination of this correspondence, as well as the letters written by Latrobe to Cooper and McPherson (Record, pp. 105 to 111 inclusive), reveals a character of work which was held by this court in the case of *Trist* vs. *Childs*, 2 Wall., 441, 453, to be entitled to *condemnation* and not to *compensation*.

It has not seemed useful to comment upon those letters written by Latrobe to his correspondents in Washington subsequent to July 16, 1870, for the reason that services rendered by him subsequent to that date cannot become subjects for consideration,

nor form the basis of a claim against the appellant under the provisions of the contract of July 16, 1870.

If the court shall consider it useful to examine the only record of the performance of professional service which Latrobe has furnished, the court will be impressed with the somewhat remarkable fact that the professional activity of Latrobe did not become aroused to the importance of making some professional effort on behalf of his clients until the appellant, by means of his own efforts, had secured the opinion of the Attorney General December 15, 1870, and the passage by Congress of the Act of March 3, 1871. (16 Stats. at Large, p. 570.)

Having knowledge that Col. Pitchlynn was the leading delegate of the Choctaw Nation, and had made the contract with Cochrane under which Latrobe now pretended to have been acting, and out of which he was to derive his compensation, the attack made upon that honored and faithful servant of the Choctaw people by Latrobe, in the communication addressed to the Secretary of the Treasury, dated April 11, 1871, (Rec., pp. 58 to 62 inclusive,) and the communication addressed to "the Principal Chief, Council and People of the Choctaw Nation," dated May 29, 1871, (Rec., pp. 54, 55, 56, 57,) seem remarkable contributions to the legal literature of this famous case.

The statement made in the letter to the Secretary of the Treasury is not at all consistent with the averments of the *seventh* paragraph of the bill "that after the close of the war of the rebellion *the Choctaw Nation* employed complainant as their counsel and professional advisor in all matters, including the Net-Proceeds Claim so called, against the United

States, *for which said Nation agreed to pay him a reasonable compensation,*" for in that letter he states as follows:

> "My connection with the Net-Proceeds Claim grows out of the fact that Mr. J. T. Cochrane, already referred to, *associated me with him in the prosecution of it in his lifetime. My compensation, as agreed upon with his executor, is a specific sum dependent on success.*"
>
> Record, p. 62.

The purpose and object of these two inconsistent statements was the same. That made to the Secretary of the Treasury, was intended to prevent, *and did prevent*, the delivery to the Choctaw Nation of the bonds authorized to be issued under the authority of the act of March 3, 1871; while the statement made in the *seventh paragraph of the bill more than seventeen years later, and shown to be untrue by the testimony of the appellee*, was made to build up an unfounded claim against the appellant, and to prevent him from receiving the money appropriated for his benefit by the Choctaw Nation.

The attack made by Latrobe, on the official representative of the Choctaw Nation, as revealed in the documents he has put into the record, produced the desired result; for the bonds were not delivered, either to the delegate of the Choctaw Nation or to any person for the Nation; and Congress, having been advised of the unfounded pretentions, and exorbitant demands made by Latrobe and his associates in respect of said bonds, withdrew the authority of the Secretary of the Treasury to issue them, by a provision contained in the Indian appropriation bill,

approved February 14, 1873. (17 Stat. at Large, 662). The amount payable on account of said bonds, less the interest thereon, formed a part of the judgment of $2,858,796.62, which the appellant secured in the Court of Claims on the 15th of December, 1886.

The court will fail to find in this record any evidence of the fact that Latrobe, or those whom he employed to aid him, rendered any service to the Choctaw Nation, in the prosecution of their claims against the United States, previous to July 16, 1870, which justified the Supreme Court of the District of Columbia, in makin a decree against the appellant for the sum of $75,000 or for anyother sum.

I. The appellee was liable under the terms of his contract with the Choctaw Nation, "to adjust" only the claims of those parties who had rendered service in the prosecution of the Choctaw claims previous to the 16th day of July, 1870; and the Supreme Court of the District of Columbia therefore erred in taking into consideration the value of any services alleged to have been rendered by Latrobe to the Choctaw Nation subsequent to that date.

The following remarkable statements are contained in the opinion delivered by the court which made the decree in this cause. The opinion first considers and discusses the Lamon case; and then the case now under consideration; but it is evident from the language used, that the court in fixing the date of the termination of the time in which it would allow Lamon compensation for his service, referred also to the same time and limit as applied to Latrobe. The language of the court upon this subject is as follows:

"We have observed that, in 1874, the Choctaws distinctly annulled the contract with Black and specially named the Cochrane contract. We have observed also through the case that they always speak of the Black contract by that name, and we have no doubt that the Intention in 1874 was to revoke and annul the Black contract. The Cochrane contract was the other name for that. It was a comprehensive thing. Now, the question is, not whether they had any right to annul the contract, but what they were talking about, and they said that provision was to be made for people who had worked on the contracts. Our conclusion is that the Choctaws in defining the trust did not mean that people whose contracts they had annulled were to come within the trust. I do not mean to say that we decide that those contracts were annulled, *but we are not supposed to refer to anything but services rendered down to the time that they annulled the contract*, at the time they annulled the Cochrane contract. So that we shall limit the services for which Lamon is to be recognized in this trust to the period between the making of the Black contract, and their cancelling with Lamon his contract as a party in interest in that contract in 1874.

"As to Latrobe's interest, we think that he stood differently. He was employed himself, and he did not come in under Black, but had an independent position, and we feel that we could estimate the value of his services so far as we propose to do it. He himself fixed the value of his services by an arrangement that he made with McPhesson at $75,000, and we are of the opinion that he shows merit up to the amount, * * * * * and we recognize him as being entitled to $75,000."

Considering the averments of the bill, and the testimony of Latrobe, and other evidence in the record,

the statements of fact, contained in the above extract, are somewhat remarkable.

If the above language means anything, it intends to assert that the Choctaw Nation, in defining the trust, alleged to have been declared in the contract of July 16, 1870, did not intend to include in its terms, or entitled to participate in its benefits, "any person whose contracts they had annulled;" and that, although McKee's contract was also annulled, "it was set up again" by the acts of the Choctaw National Council, of February 25th, 1888, (record pp. 141 to 145 inclusive), and the other annulled contracts, were also set up by the same statutes.

If the court in delivering this opinion had examined said statutes with that degree of care which would seem desirable in a case of so much importance, it would have failed to find in the statute, which again "*set up*" or revived McKee's contract, any reference to either the Cochrane or Black contracts, or to any contracts previously made by the Choctaw Nation, with any attorneys except McKee and Luce; and since the act of February 3, 1874, declared "any and all contracts heretofore entered into with attorneys and claim agent *by any delegates of the Choctaw Nation, is hereby revoked*, and by this declared null and void by this Nation," there would seem to be no doubt that Latrobe and his associate claim agents were included with the terms of that act. It would seem equally clear also that if there was no purpose expressed in the Choctaw Statutes of February 25th, 1888, to "*set up*" any of the annulled contracts except the McKee and Luce contracts, then the contract made with McKee must stand and furnish the only

evidence of any obligation existing against the appellant in favor of the Choctaw Nation; and the terms of that contract were fully performed, so far as Latrobe was instrumental in their perfomance, by the payment into court by the appellant of the specific sum he had agreed to pay to the widow of John T. Cochrane.

Again, the following language of the opinion seems remarkable, in view of the averments of the bill, and the testimony of Latrobe:

> "As to Latrobe's interest we think he stood differently. He was employed himself, and he did not come in under Black, and had an independent position."

Latrobe in his testimony declares that he had no connection with the prosecution of the Choctaw Claims except under the Cochrane contract. He was to be paid out of the proceeds which might result from the fulfillment of that contract. It is very clear, as a legal proposition, that Cochrane, under the provisions of his contract of February 13th, 1855, could make no contract with any attorney to render service under him, and to share in the fruits of his contract which would survive his death, *without the consent of the Choctaw Nation.* The Choctaw Nation, never recognized Latrobe as the legal successor of Cochrane; and when Cochrane died, the "*independent position*" of Latrobe, so far as the Choctaw Nation was concerned was at an end. The Choctaw Nation having no use for any service *he* or his associate lobbyists and claim agents could render, refused to recognize or countenance his pretensions. That Nation, however, did recognize Judge Black as

the legal successor of Cochrane; for it approved the contract made between Cochrane's executor and that distinguished lawyer. *The story invented for the necessities of this case* that Cochrane ever needed Latrobe's assistance in the prosecution of the Choctaw Claims, or employed him as an associate in their prosecution, is supported by evidence, so shadowy and unsatisfactory as to be utterly unworthy of belief. There is no evidence that there was ever any conferences between Latrobe or Cochrane in regard to these claims, while there is evidence that when Cochrane realized that his life was about to close, being desirous of securing something for his family for the useful services he had rendered to the Choctaw Nation, he never thought of or referred to Latrobe; but he did think of and communicate with McPherson, and commenced preliminary negotiations for the purpose of securing the services of Judge Black to take up and continue the prosecution of the Choctaw Claims as his successor; and these negotiations, which ignored and excluded Latrobe, were completed by the employment of judge Black. In view of these facts, how can it be possible that Latrobe can be recognized as having "*an independent position*" in his professional relations to the prosecution of the Choctaw Claims subsequent to the death of Cochrane?

There was, therefore, no propriety in fixing the time of the rendition of the service for which Latrobe was allowed $75,000, as continuing until February 3, 1874; for any claim that he rendered any service which was professionally useful to the Choctaws subsequent to the date of the contract with McKee and Blunt, is disclaimed in the *thirteenth* paragraph of the bill, in the following language:

"That complainant's professional services continued actively in behalf of said Nation until about the time said McKee interposed in the business *as the leading agent of said Nation*, which was about the month of July, 1870. After that date his services were apparently not needed or desired by the other attorneys of said Nation, *and he did but little.*"

The character of the professional service rendered subsequent to that date, has already been shown to have been in hostility to the Choctaw Nation, and not for its benefit. It is immaterial, however, whether the service volunteered by Latrobe, and rendered without any employment by the Choctaws was beneficial or injurious to them. The appellant was not liable to pay for such services unless the word "previous" can be made to read and to mean "subsequent." The limit of the appellant's liability to pay for services *previously rendered* was fixed in his contract. The court below ignored that limit, and made for the appellant a contract to which neither he nor the Choctaw Nation ever gave their assent. If this record revealed no other error than that which is here considered, it is sufficient to justify the appellant in demanding that the decree from which this appeal is prosecuted shall be reversed.

K. The motion to suppress and strike from the record those certain depositions, affidavits, exhibits, and other documents specified in the motion filed on behalf of the appellant, in the Supreme Court of the District of Columbia, on the 27th day of February, 1891, should have been sustained.

It is proposed to consider in this connection, only such affidavits, acts of the Choctaw National Council, and other documents, as are embraced in the order of the court, made and entered in this cause by Mr. Justice Cox, in the Special Term of the Supreme Court of the District of Columbia on the 19th day of May, 1890, and appearing in the record, pp. 145, 146 and 147.

The affidavits of Ainsworth, Nelson, Hodges, Folsom and Hovey, and the official letter of Smallwood, Principal Chief of the Chowtaw Nation, (Record, pp. 119 to 134 inclusive(, are supposed to be offered and relied upon to prove the fact, that the appellant secured the passage of the several acts of the Choctaw National Council, which were approved February 25, 1888, by making to the members of that Council certain promises, and by holding out to them certain inducements which influenced their action in passing said statutes; and that by reason of said promises and inducements there was incorporated into said statutes *a trust obligation*, not expressed in the contract of July 16, 1879.

The motion to suppress the above affidavits, statements and letters should have been sustained, unless they were relevant and competent testimony, for some purpose connected with the determination of some issue involved in the decision of the pending cause. They were not admissible to enlarge the obligations assumed by the appellant in his contract, nor to extend its provisions to subjects or persons not within its terms.

They were equally inadmissible to prove that the Choctaw Nation, by the language and declaration of the *fifth* section of the act No. 4, approved February

25th, 1888, (Record, pp. 143, 144, 145), intended to impose upon the appellant any specific duty or obligation to Latrobe. They were not admissible to change the terms, or aid the construction of said statutes.

These propositions are established by authorities of the highest character. In the great case of *Fletcher* vs. *Peck*, 6 Wheaton, 82, Chief Justice Marshall denounced an attempt to set aside a statute of the State of Georgia, because it was alleged that its enactment had been secured by the use of corrupt and unlawful means, in the following vigorous language:

> "This solemn question cannot be brought thus collaterally and incidently before the court. It would be indecent in the extreme, upon a private contract between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a State. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity in consequence of the impure motives which influenced certain members of the legislature which passed the law."

Endlich, on Interpretation of Statutes (Sec. 30, p. 41), states the rule which excludes extrinsic facts from consideration in the construction of a statute, in the following language:

> "But it is unquestionably a rule that what may be called the parliamentary history of an act is wisely inadmissible to explain its meaning."

The rules for the construction of a private act are not in any respect different from those applicable to public statutes. On this subject Endlich (Sec. 505, p. 709,) says:

> "When the construction of a private act is perfectly clear there is no difference between the modes of construing a private act and a public act. (Citing *Altrincham Union* vs. *Chesire Lines Committee*, L. R. 15, Q. B. D. 597, 603, per Lord Esher, M. R. And see to same effect, as the last clause (*Bartlett* vs. *Morris*, 9 Port. (Ala.), 266.)

This question is also discussed in Cooley's Constitutional Limitations, pp. 224, 225, where the following language is used:

> "And although it has sometimes been urged at the bar, that the court ought to inquire into the motives of the legislature, where fraud or corruption are alleged, and annull their action if the allegations were established, the argument has been in no case acceded to by the judiciary, and they have never allowed the inquiry to be entered upon."

To the same effect, also, are the following cases:

Ruggles vs. *Illinois*, 108 U. S., 527;
Ogden vs. *Strong*, 2 Paine, 584;
Kountz vs. *Omaha City*, 5 Dillon, 443.

It necessarily follows, therefore, that the said affidavits and other documents above designated, were not competent evidence to prove any of the facts stated in them; nor were said facts, if proved, admis-

sible for the purpose of aiding the determination of any issue involved in the decision of said cause; and the motion to suppress and strike them from the record, should therefore have been allowed.

CONCLUSION.

The appellant, with a confidence which seems justified by a consideration of the principles to which the attention of the court has been invited in the preceding argument, respectfully submits, that the decree against the appellant, from which this appeal is prosecuted, should be reversed, and the cause remanded to the Supreme Court of the District of Columbia, with a mandate to that court to dismiss the bill.

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